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The safety of journalists and the issue of impunity

Report of the Secretary-General

Summary

In its resolution 68/163 on the safety of journalists and the issue of impunity, the General Assembly requested the Secretary-General to submit to the Assembly, at its sixty-ninth session, a report on the implementation of the resolution. The present report is submitted pursuant to that request. The report gives an overview of recent trends with regard to the safety of journalists and media workers, as well as of initiatives undertaken to ensure their protection, and includes conclusions and recommendations.

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I. Introduction

1. On 18 December 2013, the General Assembly adopted its first resolution on the safety of journalists and the issue of impunity (resolution 68/163), in which the Assembly condemned all attacks and violence against journalists and media workers and proclaimed 2 November as the International Day to End Impunity for Crimes against Journalists. The Assembly also urged Member States to do their utmost to prevent violence against journalists and media workers, ensure accountability, bring to justice perpetrators of crimes against journalists and media workers, and ensure that victims have access to appropriate remedies. It further called upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference.

2. In the same resolution, the General Assembly requested the Secretary-General to report to it, at its sixth-ninth session, on the implementation of the resolution. The present report is submitted pursuant to that request. The report gives an overview of recent trends with regard to the safety of journalists and media workers, as well as of initiatives undertaken to ensure their protection, and includes conclusions and recommendations. The report is based on submissions received in response to a note verbale dated 14 March 2014 and request for information addressed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to Member States and civil society organizations,[1] as well as on information gathered from public sources. A request was also sent to United Nations agencies, departments, funds and programmes. The report has benefited considerably from contributions received from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Office on Drugs and Crime (UNODC).

II. Situation and trends with regard to the safety of journalists and media workers

3. Independent and critical journalism is vital in any democratic society. It drives the right to hold and express opinions and the right to seek, impart and receive information and ideas, as defined in article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. It contributes to ensuring transparency and accountability in the conduct of public affairs and other matters of public interest, and it enables individuals to participate fully, actively and meaningfully in all aspects of society (see A/HRC/27/35, paras. 5 and 25). Journalists and media workers are the watchdogs that help in holding governments, businesses and others to account. It is precisely because of this role, however, that journalists and media workers often, and increasingly, have become

[1] Responses were received from the following States: Argentina, Austria, Azerbaijan, Burkina Faso, Colombia, Czech Republic, Greece, Guatemala, Honduras, Luxembourg, Mexico, Norway, Paraguay, Poland, Romania, Russian Federation, Sudan, Trinidad and Tobago, Tunisia and Uzbekistan. Responses were also received from the following non-governmental and other organizations: Amnesty International, Belarusian Association of Journalists, Committee to Protect Journalists, Fondation Hirondelle, Global Network for Rights and Development, Human Rights House Foundation, Institute for Reporters' Freedom and Safety, International Committee of the Red Cross, Reporters Without Borders, Maarij Foundation for Peace and Development, SOS Droits de l'Homme et Démocratie, Press Emblem Campaign and Guatemalan Human Rights Defenders Unit (UDEFEGUA).

the target of harassment, intimidation and violence. Such attacks include threats to journalists and their families, expulsion, unlawful or arbitrary arrest and detention, abduction, torture, sexual violence and murder. The purpose is often to silence journalists and media workers who investigate, document and report on sensitive issues, such as human rights violations, environmental degradation, corruption, organized crime, drug trafficking, public crises, emergencies or public demonstrations (see A/HRC/20/17, para. 51; and A/HRC/24/23, para. 3. Both State and non-State actors commit attacks on journalists and media workers, and such attacks are committed both in and outside the context of armed conflicts (see A/HRC/24/23, paras. 3 and 6). They are not only an attack on the individuals concerned, but also on freedom of expression and democracy.

4. The digital age has vastly increased the opportunities for the dissemination of information and ideas. New and creative forms of journalism and media have consequently emerged. In the preamble to resolution 68/163, the General Assembly captured this trend by acknowledging that journalism is continuously evolving to include inputs from media institutions, private individuals and a range of organizations that seek, receive and impart information and ideas of all kinds, online as well as offline, in the exercise of freedom of opinion and expression, thereby contributing to shape public debate. The Human Rights Committee, in its general comment No. 34, defined journalism as "a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere" (see CCPR/C/GC/34, para. 44; see also A/HRC/20/17, paras. 4 and 5; A/HRC/20/22, para. 26; and A/HRC/24/23, para. 9). Technological developments, however, have also brought new challenges, such as illegal surveillance and interference in the personal and professional lives and activities of journalists, the blocking of websites that contain information critical of the authorities, and the arbitrary arrest and detention of online journalists and bloggers (see A/HRC/24/23, para. 9). In this regard, the High Commissioner for Human Rights pointed out that all individuals were entitled to the full protection of their human rights, whether the State recognized them as 'journalists' or not; whether they were professional reporters or 'citizen journalists'; whether or not they had a degree in journalism; whether they reported online or offline(see A/HRC/27/35, para. 9).

5. UNESCO monitors press freedom globally and keeps statistics of fatal attacks on journalists. In 1997, at its twenty-ninth session, the General Conference of UNESCO adopted resolution 29, in which it condemned violence against journalists and called on its Member States to uphold their obligation to prevent, investigate and punish crimes against journalists. Since then, the Director-General of UNESCO issues a public condemnation when a "journalist, media worker, or social media producer who generates a significant amount of public-interest journalism" is killed, and calls on the country concerned to inform UNESCO, on a voluntary basis, of the status of the judicial inquiry into the killing.[2] This information is compiled into the biennial report by the Director-General on the safety of journalists and the danger of impunity.[3] The UNESCO *World Trends in Freedom of Expression and Media*

[2] The Director-General issued 92 public condemnations in 2013 and 44 in the first six months of 2014.

[3] For the most recent report, see: www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/unescos-director-general-report/.

Development report[4] includes an analysis of information gathered between 2007 and 2012.

6. The *World Trends* report shows an upward trend in the number of journalists killed: nearly 30 per cent of the 430 killings that were condemned in the period between 2007 and 2012 occurred in 2012. Politically motivated killings are endemic, and at least 75 per cent of the journalists whose killings were condemned by the UNESCO Director-General in 2010 and 2011 appear to have been murdered. Print journalists experienced the most casualties (176), followed by television (100) and radio (87) journalists. In 2012, the ratio shifted towards Internet publishing, as a result of the increase in the number of deaths of "citizen journalists" and the fact that many journalists cross-publish on multiple platforms. "Citizen journalists" have become a target alongside their professional counterparts. From a geographical perspective, the report shows that among journalists killed, print journalists tend to outnumber those working in other media in all regions, with the exception of Africa, where radio journalists constitute the highest proportion of journalists killed, and the Arab region, where online journalists were the majority of those killed in 2012. Another constant trend has been that local journalists covering local stories make up a substantial part of those killed. A final trend to highlight is the increased number of journalists, media workers and social media producers being detained.[5]

7. Civil society organizations also track attacks against journalists. The statistics vary as each organization uses different definitions of "journalist" and "killed in the line of duty". However, the overall trends are similar. For example, in 2013, the Committee to Protect Journalists, documented 70 journalists killed in relation to their work (for which the motive was considered confirmed), just four fewer than documented in 2012. Most of those killed in 2013 covered politics (67 per cent), war (51 per cent) or human rights (46 per cent). Nearly half (44 per cent) worked online.[6] According to the Committee, a total of 1,059 journalists have been killed in relation to their work since 1992, of which at least 19 were killed in the first six months of 2014. The Committee also reported that 456 journalists have been exiled since 2008 and that the detention of journalists has been at historic highs, with 2012 and 2013 representing the worst years for journalists since the organization started to keep records. Most of the 211 imprisoned journalists in 2013 were convicted of anti-State charges (e.g., subversion or terrorism), although the charges were often not revealed. Just over half of them worked online. This trend seems to indicate a disturbing expansion of countries' use of detention to silence critical voices, especially online. Other organizations report similar figures. Reporters Without Borders counted 43 journalists, "netizens" and "citizen journalists" killed in the first half of 2014 (129 in 2013) and 357 imprisoned.[7] The International Federation of Journalists reported 39 journalists and media staff killed in the first six months of

[4] UNESCO, *World Trends in Freedom of Expression and Media Development* (Paris, 2014), available from www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/world-trends-in-freedom-of-expression-and-media-development/; "*World Trends* report" hereafter.

[5] Ibid., executive summary, and introduction. See also the *UNODC Global Study on Homicide 2013 — Trends, Contexts, Data* (United Nations publication, Sales No. 14.IV.1).

[6] Submission received from the Committee to Protect Journalists. See also www.cpj.org.

[7] See www.rsf.org.

2014 (123 in 2013),[8] and the Press Emblem Campaign counted 58 journalists killed in the first half of 2014 (129 in 2013).[9]

8. While most available numbers relate to killings, journalists and media workers also suffer from other violations, such as harassment, intimidation and violence. One example is legal harassment, where journalists are often tried on false grounds of espionage, subversion, threat to national security or terrorism. The criminalization and prosecution of slander, libel and defamation have also frequently been used to silence critical journalists. The inappropriate use of such laws has resulted in journalists and media workers serving long prison sentences, paying heavy fines or having their media licences suspended (see A/HRC/24/23, para. 8). The Special Rapporteur on the promotion and protection of the freedom of opinion and expression has repeatedly called on States to decriminalize defamation and eliminate all forms of censorship (see A/HRC/20/17, para. 105; and A/HRC/27/35, para. 17).

9. With respect to thorough and impartial investigations into killings or attacks against journalists and bringing the perpetrators to justice, impunity remains the dominant trend. Time and again impunity been recognized as the biggest obstacle to ensuring the safety of journalists (see A/HRC/27/35; and also A/65/284, para. 28; A/HRC/14/23, para. 94; A/HRC/20/17, para. 65; and A/HRC/24/23, para. 7). The 2014 *World Trends* report suggests that less than one in ten killings of journalists between 2007 and 2012 has led to a conviction. Less than half of the Member States where killings occurred responded to requests by the UNESCO Director-General calling for voluntary information on the status of judicial inquiry into the killings, indicating a lack of commitment to protect journalists effectively. Research from the Committee to Protect Journalists shows that 10 out of the 13 countries that have been on its list of countries where journalist murders are most likely to remain unresolved, have figured on that list each year since 2008. Also, in eight of those countries, new murders took place in 2013.[6] These trends illustrate the challenge of reversing entrenched impunity and highlight that a climate of impunity engenders further violence.

III. Legal framework for the protection of journalists and media workers

10. The OHCHR report on safety of journalists presented to the Human Rights Council in September 2013 (A/HRC/24/23), lays out, in paragraphs 10 to 16, the existing international legal framework for the protection of journalists and media workers, both under international human rights and international humanitarian law. The report clearly recalls the obligation of States to respect and to ensure respect for the human rights of journalists and media workers. It encompasses a positive duty on States to ensure that persons are protected from any acts that would impair the enjoyment of their rights, including by taking effective measures or exercising due diligence to prevent any harm caused by private persons or entities. This obligation to protect is particularly important in relation to threats and attacks against journalists committed by non-State actors.

[8] See www.ifj.org.

[9] See www.pressemblem.ch.

11. The report further recalls that when violations of international human rights law or international humanitarian law have allegedly been committed, States are under an obligation to investigate effectively, promptly, thoroughly, independently and impartially and, if appropriate, prosecute those who are responsible. Furthermore, violations of international human rights law and international humanitarian law give rise to a right of victims to an effective remedy, which includes the right to equal and effective access to justice and adequate, effective and prompt reparation for the harm suffered (ibid., para. 16). Without accountability for violations, human rights and other norms risk becoming empty shells. Accountability is a cornerstone of any society that is based on the rule of law.

12. It is widely agreed that the international legal framework for the protection of journalists and media workers is in place (see A/HRC/27/35, paras. 14, 17, and 31-35). However, States must close the gap that exists between the international and regional standards and the actual implementation of these standards domestically (ibid., para. 54). Awareness and enforcement of existing standards is critical to increase the protection of journalists (see, e.g., A/HRC/20/17, para. 56). The safety of journalists and media workers cannot be realized without a domestic legal and institutional framework that robustly protects freedom of opinion and expression and press freedom at the national level (see A/HRC/27/35, paras. 55-58).

IV. Initiatives undertaken to ensure the safety of journalists

A. Security Council and General Assembly

13. In 2006, the Security Council adopted resolution 1738, in which it condemned attacks against journalists, media professionals and associated personnel in situations of armed conflict, recalling that such persons shall be considered civilians and thus respected and protected as such. By this resolution, the Council decided to address the issue of protection of journalists under the agenda item "protection of civilians in armed conflict".[10] In paragraph 24 of his tenth report on protection of civilians in armed conflict (S/2013/689), the Secretary-General highlighted the killings of journalists in Afghanistan, Iraq and the Syrian Arab Republic. He also underlined that most of the victims were local journalists and media staff, and that journalists were also subject to other forms of violence, including sexual harassment and rape of female journalists. The Secretary-General called on the Security Council to reflect its concerns in relevant resolutions through the inclusion of actions to strengthen the protection of journalists (see also S/2009/277, S/2010/579 and S/2012/376, paras. 14 and 15)).

14. In July 2013, the Security Council held an open debate on the protection of journalists in armed conflict, during which the Deputy Secretary-General stressed that the Council could play an important role by reacting to, and standing up against, the suppression of media freedom wherever and whenever it occurs. He emphasized that protecting free media is a prerequisite for freedom of expression and democracy, and relevant for the pursuit of peace and security, as well as development. In December 2013, under the Arria Formula, the Council also discussed the protection of journalists.

[10] See also country-specific resolutions, e.g., resolutions 1973 (2011) on Libya, 2093 (2013) on Somalia and 2096 (2013) on Afghanistan.

15. The General Assembly has emphasized the need for States to ensure respect for and protection of journalists while working in situations of armed conflict (see, e.g., resolutions 2673 (XXV), 2854 (XXVI) and 3500 (XXX). In December 2013, the Assembly adopted its first resolution on the safety of journalists and the issue of impunity (resolution 68/163).

B. United Nations human rights system

16. On 9 October 2013, the Human Rights Council adopted resolution 21/12, with a specific focus on the safety of journalists.[11] In the resolution, the Council expressed its concern regarding ongoing violations of the right to freedom of opinion and expression, condemned in the strongest terms all attacks and violence against journalists, and stressed the need to ensure greater protection for all media professionals and journalistic sources. The Council also expressed its concern that attacks against journalists often occur with impunity, and called upon States to ensure accountability and to promote a safe and enabling environment for journalists to perform their work independently and without undue interference.

17. Upon the request of the Human Rights Council, OHCHR prepared, in collaboration with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, a compilation of good practices in the protection of journalists, the prevention of attacks committed against journalists and the fight against impunity for such attacks. The report was presented to the Human Rights Council in September 2013, at its twenty-fourth session (A/HRC/24/23), and its findings were examined at a panel discussion held by the Council on 11 June 2014, at its twenty-sixth session (see A/HRC/27/35). Based on inputs received from States, the report formulates good practices in four areas: political commitment; legislative framework; combating impunity; and protection. Both the report and the panel discussion concluded that it is incumbent upon States to learn from these good practices and ensure the safety of journalists through the implementation and enforcement of existing norms and standards (see A/HRC/24/23, paras. 47-73).

18. In its resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests, the Human Rights Council called upon all States to pay particular attention to the safety of journalists and media workers covering peaceful protests, taking into account their specific role, exposure and vulnerability. It recognized the important role played by journalists and other media workers in documenting human rights violations or abuses committed in the context of peaceful protests.

19. The safety of journalists has also been addressed by Human Rights Council-mandated international commissions of inquiry, which are supported by OHCHR.[12]

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[11] The Human Rights Council had earlier already addressed the issue of safety of journalists in the context of the right to freedom of expression and opinion. See resolutions 7/36, 12/16, 16/4, and 19/35. See also Commission on Human Rights resolution 1993/45.

[12] For example, the International Commission of Inquiry on human rights in the Democratic People's Republic of Korea (A/HRC/25/CPR.1, paras. 204-209); the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/22/59, paras. 46-54, 139, and annex XII, para. 2; A/HRC/24/46, paras. 153-159; A/HRC/25/65, paras. 58 and 122-126); the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya (A/HRC/17/44, paras. 117, 144-154, 248 and 254).

The issue is further of concern to special procedures, who have given it significant attention through their reports, awareness-raising and advocacy related activities, and direct interventions with Governments through the communications procedure. The issue of the safety of journalists has, for example, received considerable attention from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (see, most recently, A/HRC/14/23 and Add.2 and A/HRC/20/17), the Special Rapporteur on extrajudicial, summary or arbitrary executions (see A/HRC/20/22), and the Special Rapporteur on the situation of human rights defenders (see A/HRC/13/22, A/HRC/19/55 and A/HRC/25/55). These Special Rapporteurs have highlighted the detrimental impact of attacks on journalists on the full realization of the human rights on which they are mandated to report and advise. They have made important recommendations aimed at ensuring greater protection for journalists and media workers. The Working Group on Arbitrary Detention[13] and the Working Group on Enforced Disappearance (see, e.g., A/HRC/16/48, para. 441; A/HRC/19/58/Rev.1 (annex I), paras. 159, 160, 335, 444-448, 520 and 549; A/HRC/22/45 and Corr.1, paras. 140-143 and 414) have addressed, through individual or joint communications, cases concerning journalists. Finally, the issue of attacks on journalists and impunity for those attacks has also been dealt with by the Human Rights Committee, notably in its general comment No. 34 on article 19 of the International Covenant on Civil and Political Rights.

C. United Nations agencies, departments, funds and programmes

20. UNESCO has undertaken a number of significant initiatives to strengthen the protection of journalists as part of its mandate to defend freedom of expression and press freedom. It convened two United Nations inter-agency meetings on the safety of journalists and the issue of impunity in Paris (September 2011) and Vienna (November 2012). These meetings brought together United Nations bodies and non-governmental and intergovernmental organizations, independent experts, media groups and professional associations to formulate a strategy to address the safety of journalists and impunity at the global and national levels. The meetings culminated in the adoption of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, and its Implementation Strategy 2013-2014. The Plan aims to create a free and safe environment for journalists and media workers, both in conflict and non-conflict situations, and to combat impunity for attacks on journalists. The Plan includes measures such as the establishment of an inter-agency mechanism to strengthen the contribution of each United Nations actor and enhance United Nations-wide coherence; cooperation with Member States to develop legislation and other mechanisms for safeguarding the freedom of expression and information as well as the safety of journalists; and the establishment of partnerships, awareness-raising and fostering initiatives. The Plan of Action will be reviewed during a third inter-agency meeting, to be convened in Strasbourg, France, in November 2014.

21. In order to obtain a more accurate picture of the safety of journalists in a particular country, UNESCO developed the Journalists' Safety Indicators, allowing for a comprehensive assessment and gathering of crucial baseline data on the level

[13] E.g., since 2000, over 20 opinions of the Working Group have addressed allegations of arbitrary detention of journalists.

of safety of journalists and impunity. Such information will guide future policymaking and allow measurement of progress. The tool is being piloted in Guatemala, Honduras and Pakistan.

22. In collaboration with Member States, United Nations system agencies, non-governmental organizations (NGOs), academia and media practitioners, UNESCO started to implement the Plan of Action in four pilot countries: Iraq, Nepal, Pakistan, and South Sudan. In Iraq, a national consultative meeting was scheduled to produce a national plan of action, but the work environment has become too difficult and the implementation has been put on hold. In Nepal, funding was obtained from the United Nations Peace Fund for Nepal to implement the Plan. UNESCO works closely with the Human Rights Commission of Nepal to anchor the process in a locally based entity. Empowering local organizations and encouraging genuine ownership of the process are considered key to the Plan's success and sustainability. The Human Rights Commission of Nepal is to monitor the safety of journalists in the country, provide advice and training to journalists in need and become the focal point for resources related to safety of journalists in the country. Dialogues have been organized with prosecutors, district judges and police officials in six different regions of Nepal to highlight the issue of safety of journalists. In Pakistan, a coalition of local authorities, United Nations system agencies, NGOs and local media, acts as a steering committee to implement the Plan. There have been several awareness-raising campaigns to sensitize the stakeholders on the subject and the Plan. One of the main recommendations of the coalition is the establishment of a special prosecutor's office for investigating all crimes against freedom of expression and journalists in the country. In South Sudan, a national plan of action is being drafted by the Thematic Working Group on Safety of Journalists and the Issue of Impunity, which includes 20 different organizations active in the promotion of safety of journalists in the country (including governmental institutions, United Nations agencies, media groups and academia). Workshops for journalists and civil society, focusing on the monitoring and documentation of press freedom violations, have been conducted together with the Human Rights Division of the United Nations Mission in South Sudan.

23. Parts of the Plan of Action have also been implemented in other countries. In Tunisia, for example, a cooperation programme has been set up with the Ministry of Interior and in partnership with the National Union of Tunisian Journalists and the Tunisian Centre for Freedom of the Press, aimed at training security forces on human rights, freedom of expression and safety of journalists. Several training sessions took place in 2013, bringing together members of the security forces and journalists and helping to create a space for dialogue and better understanding of their respective roles. Jointly with the Tunisian Ministry of Interior, UNESCO developed a set of training manuals aimed at security forces. These manuals include chapters on freedom of expression, international standards, teaching modules and practical solutions to be adopted by security forces in their interaction with journalists. In March 2014, the UNESCO International Programme for the Development of Communication approved 13 projects related to the Plan of Action, including in Burkina Faso, Colombia, the Dominican Republic, Liberia, Mexico, Nigeria, Pakistan, South Sudan, Viet Nam, Zimbabwe and the regions of Central America and Central Asia. The key focus areas for 2014 and beyond include the training of security forces on freedom of expression issues, working with judicial

systems to reduce impunity, and the adoption of international standards for the investigation of crimes against journalists.

24. In November 2013, UNODC launched a new resource tool for Governments and journalists, entitled "Reporting on corruption". The tool covers a wide range of subjects, including the protection of the anonymity of sources, the right of access to information, and the safety of journalists. It offers information and experiences provided by States, and highlights international standards, case-law and recommendations from international experts. Also, the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region implemented four training programmes for journalists from the region, in which the issue of safety of journalists featured prominently. The programmes took place in Lebanon (2011), Libya (2012), Yemen (2013) and Morocco (2014). The training is conducted with UNESCO, the Human Rights Department at Al-Jazeera and the Doha Centre for Media Freedom.

25. Very few studies, especially large-scale ones, have been conducted on the topic of the safety of female journalists. In March 2014, UNESCO, in collaboration with the International News Safety Institute, the International Women's Media Foundation and the Austrian Government, launched the results of a survey, entitled "Violence and harassment against women in the news media: a global picture", in which nearly 1,000 self-identified women journalists took part. The survey will be updated and translated into Arabic and Spanish.

26. UNESCO and other United Nations system agencies and departments are also involved in awareness-raising initiatives regarding the safety of journalists. Since 1993, UNESCO has organized the annual celebration of the World Press Freedom Day on 3 May, commemorating press freedom and freedom of expression, and paying tribute to journalists. An annual World Press Freedom Day conference brings together journalists, editors, experts, academics, students, representatives of international and regional organizations and civil society. In 2013, the conference, held in San José, Costa Rica, was focused on the safety of journalists and the issue of impunity and led to the adoption of the San José Declaration "Safe to speak: securing freedom of expression in all media". In 2014, the conference took place in Paris, on the theme "Media freedom for a better future: shaping the post-2015 development agenda" and a subtheme entitled "Rule of law to ensure safety of journalists and combating impunity". The Paris Declaration was adopted on the right of access to information, independent media, and safety for exercising freedom of expression as essential aspects of development. UNESCO also promotes the organization of local World Press Freedom Day celebrations through its field offices and through other press freedom advocates around the world. More than 100 celebrations take place every year. World Press Freedom Day is increasingly present in social media. In 2013 and 2014, the hashtag #pressfreedom has been worldwide "trending topic" on 3 May. UNESCO also awards the UNESCO/ Guillermo Cano World Press Freedom Prize, honouring a person, organization or institution that has made an outstanding contribution to the defence and/or promotion of press freedom.

27. Finally, UNESCO is coordinating events for the first International Day to End Impunity for Crimes against Journalists, to be held on 2 November 2014. The Day is a joint effort between relevant United Nations system agencies, civil society and media houses. The theme of the first International Day will be the role of lawmakers

and the judicial system in fighting impunity for crimes against journalists. As part of the celebrations, UNESCO will launch an awareness-raising campaign and hold a seminar in Strasbourg, followed by the third United Nations inter-agency meeting on the safety of journalists and the issue of impunity.

D. Regional and other organizations

28. Many governmental and non-governmental organizations and civil society actors have also undertaken important initiatives on the safety of journalists and media workers. Several regional organizations, for example, have contributed to standard-setting and awareness-raising through the adoption of resolutions or guidelines regarding the safety of journalists. In 2002, the African Union adopted the Declaration on Principles on Freedom of Expression in Africa, in which it condemned attacks on media practitioners and others exercising their right to freedom of expression, and reminded States of their responsibilities to ensure the safety of journalists. More recently, the African Commission on Human and Peoples' Rights adopted a number of resolutions on the issue of safety of journalists.[14] In May 2014, the European Union adopted Guidelines on Freedom of Expression Online and Offline, in which it reaffirmed that it attaches the highest priority to the safety of journalists and that it will take all appropriate steps to ensure their protection, both in terms of prevention and by urging effective investigations when violations occur. The safety of journalists has also become an issue of priority at the Council of Europe. In November 2013, it adopted a resolution on the safety of journalists, in which attacks on journalists and impunity for perpetrators were condemned. On 30 April 2014, the Council of Europe Committee of Ministers issued a declaration on the protection of journalism and safety of journalists and other media actors.[15] Regional courts, notably the Inter-American Court on Human Rights and the European Court of Human Rights, have found that attacks on journalists violate the right to freedom of expression and many other rights, and that there are positive obligations on States to protect journalists, as well as to carry out effective investigations into alleged attacks (see A/HRC/24/23, para. 43).

29. Regional organizations have also established specific mechanisms tasked with promoting and protecting freedom of expression, with the safety of journalists as a main concern. In 1997, the Organization of American States established the Office of the Special Rapporteur for Freedom of Expression, which made the safety of journalists a strong focus. In 2013, the Office of the Special Rapporteur published a report entitled *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*.[16] Also, in 1997, the Organization for Security and Cooperation in Europe (OSCE) established the mandate of the Representative on Freedom of the Media to provide early warning on violations of freedom of expression and advocate

[14] See resolution 185 (2011) on the safety of journalists and media practitioners in Africa: www.achpr.org/sessions/49th/resolutions/185/; and resolutions 221 (2012) and 264 (2014) on attacks against journalists and media practitioners in Somalia.

[15] For both texts, see www.coe.int/t/dghl/standardsetting/media/.

[16] Available from www.oas.org/en/iachr/expression/reports/thematic.asp; the report was also published in the Annual Report of the Inter-American Commission on Human Rights 2013 (vol. II): Report of the Office of the Special Rapporteur for Freedom of Expression, chap III.

full compliance with OSCE principles and commitments regarding freedom of expression and media. In 2014, the Office of the Representative issued the second edition of its Safety of Journalists Guidebook, which sets out good practices and recommendations to ensure a media-friendly environment and enhance the safety of journalists. In 2004, the African Commission on Human and Peoples' Rights established the mandate of Special Rapporteur on Freedom of Expression and Access to Information in Africa. These mandate holders have, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, issued several joint declarations on different aspects of the right to freedom of expression, including the safety of journalists and media workers.[17]

30. Regional organizations are also supporting specific projects aimed at increasing the protection of journalists. The European Union currently funds a number of pilot projects in the area of violations of media freedom and pluralism.[18] These projects aim at enhancing practical support mechanisms for journalists, providing legal and practical support to journalists on criminal defamation and building real-time mapping of violations of media freedom. The Council of Europe announced that it will elaborate guidelines for the protection of journalism and the safety of journalists. It established a committee of experts to prepare a recommendation on the protection of journalism and the safety of journalists and other media actors, and it is working on developing early warning and rapid response capacity through an Internet-based platform.[19] The International Organization of la Francophonie considers it one of its priorities to put in place a legal framework that permits the media to exercise its role freely; to that effect, the Organization conducts support missions to its member States (see A/HRC/27/35, para. 44).

31. Since 1985, the International Committee of the Red Cross (ICRC) has operated a hotline for journalists on dangerous assignments, through which journalists, their families and media organizations can request ICRC assistance if a journalist is arrested, wounded, detained, missing, or killed. ICRC also conducts, often in cooperation with other organizations, training on international humanitarian law and first aid for media professionals. In November 2011, the 31st International Conference of the Red Cross and Red Crescent adopted the Four-Year Action Plan for the Implementation of International Humanitarian Law, in which the importance of journalists was reaffirmed and recommendations aimed at the protection of journalists in situations of armed conflict were made. The plan focuses on measures of prevention and sanctions in order to ensure better respect for existing rules (e.g., integration of the protection of journalists in international humanitarian law training of armed forces).

32. Non-governmental organizations and civil society actors also play an important role in documenting violence against journalists, raising awareness, reporting, assisting in the legislative and policy development related to the protection of journalists, training and taking steps to address the violence, including by providing direct assistance.

[17] For an overview, see www.osce.org/fom/66176.

[18] See http://ec.europa.eu/digital-agenda/en/media-freedom-%E2%80%93-pilot-projects.

[19] For further information, see www.coe.int/t/dghl/standardsetting/media/roundtable-en.asp.

E. Member States

33. In response to the note verbale addressed to them by OHCHR, Member States have shared information about a wide range of initiatives undertaken to prevent violence against journalists and media workers, to ensure accountability for such violence, and to promote a safe and enabling environment for journalists to perform their work independently and without undue interference. The overview below also draws from the statements made by States at the Human Rights Council panel discussion on the safety of journalists (see A/HRC/27/35) as well as the OHCHR report on the safety of journalists (A/HRC/24/23).

1. Legislative initiatives

34. Putting in place a legal framework that robustly protects the right to freedom of expression, press freedom and the right to information is critical to ensuring the safety of journalists. Such a framework contributes to an enabling environment in which journalists and media workers can carry out their job freely and without interference. In their contributions, many States noted that freedom of expression and the right to information were protected by their constitutions, laid out the legislative framework in which journalists and media workers operate in their country, and reported recent or upcoming changes in their laws to ensure freedom of expression and freedom of information in accordance with international standards. The express prohibition of censorship, the protection of journalists' sources, and guarantees for media pluralism and diversity were mentioned in the responses. Several States also reported that they had recently decriminalized acts of slander, defamation, contempt or libel (Grenada, Mexico, Montenegro, Republic of Moldova, Russian Federation, Serbia, Trinidad and Tobago, Tunisia and Uruguay).[20]

35. While some States pointed out that their laws apply generally and therefore also provide protection to journalists, other States referred to constitutional and legislative measures intended to address the protection of journalists specifically. For example, Mexico noted that in 2013, it had adopted a decree pursuant to which the federal prosecutor and the federal courts can now prosecute and try crimes that affect or restrict the right to information or freedom of expression. The fact that a crime affects or restricts the right to information or freedom of expression was also made an aggravating circumstance in Mexico, increasing the severity of the sentence. In Colombia, article 73 of the Constitution specifically provides that "journalism will enjoy such protection as necessary to guarantee its freedom and professional independence". The Russian Federation reported that the amendments made in 2011 to its Criminal Code established criminal liability for obstructing the professional activities of journalists by violence or threat of violence. Azerbaijan and Uzbekistan referred to similar provisions in their laws.[21] Romania noted that its law of 2002 on radio and television broadcasting provides that, upon request, public authorities are to ensure the proper protection of journalists and broadcasters in case they experience pressure or threats that could impede on or restrict the free exercise of their profession. The Audiovisual Code in the Republic of Moldova contains a similar provision. Serbia amended its Criminal Code to criminalize threats against

[20] Azerbaijan stated that it had suspended the criminal code provisions on libel and slander and drafted a new defamation bill, which was under review with the Council of Europe.

[21] Article 163 of the Criminal Code of Azerbaijan and the Protection of the Professional Activities of Journalist Act of Uzbekistan.

journalists performing their professional duties by including journalists in a group of persons significant in the field of public information (see A/HRC/24/23, para. 22). The Polish Press Act makes it punishable to hinder the gathering of critical press material or to suppress press criticism in any way. In Tunisia, Decree 115 of 2011 guarantees the protection of journalists from harassment.

36. Austria noted that it had amended its Military Service Act to implement article 79 of Additional Protocol I to the Geneva Conventions, and that, as at 1 January 2014, its Ministry of Defence issues identity cards for journalists on dangerous professional missions, attesting their status as journalists (civilians).

2. Initiatives to combat impunity

37. In their responses, several States reported specific initiatives undertaken to ensure the investigation and prosecution of threats and attacks against journalists and media workers. Mexico stated that it had created a special prosecutor's office for crimes against the freedom of expression, with the authority to direct, coordinate and supervise investigations, and where appropriate, prosecute crimes committed against journalists. The office is also involved in the systematization of information regarding attacks against journalists. Guatemala created a special unit on crimes against journalists in the Public Prosecutor's Office. In Colombia, a subunit was established in the Public Prosecutor's Office to conduct investigations into crimes against journalists. Colombia also reported that in 2010 it had extended the statute of limitations in the case of murder of journalists to 30 years, and made murder, kidnapping and threats directed against journalists an aggravating circumstance. Brazil stated that it intended to implement the recommendations made in a report of its National Human Rights Council working group on the human rights of media professionals, including the establishment, in partnership with the United Nations, of an "observatory on violence against media professionals", managed by a tripartite steering committee composed of civil society, relevant government entities and the United Nations. The observatory is to register cases of violence against media workers and monitor their resolution (see A/HRC/27/35, para. 46).

38. Serbia noted that it had created a national commission to review the investigations of the killing in the 1990s of three prominent journalists (see A/HRC/24/23, para. 24). Pakistan stated that it had set up "high-powered" commissions to investigate allegations of intimidation and harassment. Morocco mentioned that it planned to create a coordination mechanism between the Ministry of Justice and the National Syndicate of the Moroccan Press that would be in charge of investigating attacks and cases of restrictions of which journalists are victim (see A/HRC/27/35, para. 46).

39. Some States also referred to specific strategies or instructions for the investigation of crimes against journalists. For example, the Public Prosecutor's Office of Colombia developed a set of strategies to investigate threats directed at journalists. Norway reported that its State Attorney had instructed the police to give harassment, threats and violence against media workers special priority. The Russian Federation reported that, in 2013, a series of additional measures had been developed to investigate crimes against journalists, including regarding inter-agency cooperation and regular exchange of information.

3. Protection initiatives

40. As for specific protection measures, Colombia reported that in 2011 it had created a national protection unit under the Ministry of Interior, which brings together previously separate protection schemes for judges, prosecutors, witnesses, human rights defenders, displaced persons, journalists and others. The Unit's Risk Evaluation Committee, an interinstitutional committee, evaluates whether a person needs protection and decides the relevant protective measures. As of June 2014, the Unit, which has been in direct contact with civil society organizations, has provided protection to 112 journalists and media workers. Mexico stated that its Law on the Protection of Human Rights Defenders and Journalists of 2012 created mechanisms to increase cooperation between federal and state agencies and civil society to implement measures to protect human rights defenders and journalists. The Law also established a fund for the protection of human rights defenders and journalists, which provides funding for urgent and preventive measures. An early warning system has the purpose of providing journalists with immediate access to the authorities if threatened.

41. Guatemala noted that a division of its National Police provides protection to persons at risk, including journalists. In August 2013, the President of Guatemala also launched a journalists' protection plan, which provides for preventive measures. In Italy, the Ministry of Interior established a central bureau of inter-forces for personal security, which is tasked to protect journalists and their relatives who are exposed to danger or threat, potential or actual (ibid., para. 47). The Russian Federation stated that the Federal Service for Supervision of Communications, Information Technology and Mass Media operated a hotline on its website. All information received on violations of rights of journalists is transmitted to law enforcement agencies. Honduras reported that its Human Rights Action Plan encompassed a specific protection component for journalists and other human rights defenders. It has prepared a draft law, which provided for the creation of a national council for the protection of human rights defenders, journalists, "social communicators" and justice officials. The council would be a steering, deliberative and advisory organ designed to guarantee and implement the rights set out in the law and to advise the Office of the President regarding the protection of the groups covered under the law. It further provided for the establishment of a protection unit attached to the Office of the Minister of Security, which will be responsible for implementing preventive and urgent protection measures.

42. Montenegro noted that the police performed risk assessments for all media employees and their family members who had been subjected to threats, after which protective measures, including police protection, may be provided. In addition, checks were conducted on persons registered as having committed assaults against journalists (see A/HRC/24/23, para. 27).

43. Argentina stated that, in accordance with resolution 210/2011 of the Ministry of Security, it had created a working group tasked to prepare protocols for security forces acting in demonstrations. According to the resolution, security forces must respect, protect and guarantee the work of journalists, who cannot be harassed, detained or transferred for the mere fact of carrying out their jobs during demonstrations. The Russian Federation referred to a memorandum of 2008 on the principles of interaction between mass media and law enforcement bodies during

mass and public events in Moscow, signed by the main departments of the Ministry of Interior of Moscow and the Union of Journalists of Moscow.

4. Advocacy, training and awareness-raising initiatives

44. Preventive measures are crucial to strengthen the safety of journalists and media workers. These measures may include capacity-building of law enforcement officials and the judiciary on their role and responsibilities in ensuring the safety of journalists; training for journalists on how to protect themselves; general awareness-raising campaigns to promote a culture of respect for freedom of expression and freedom of the media; establishing effective mechanisms of cooperation between State agencies and civil society organizations; and so forth.

45. In their submissions, several States reported on their support for prizes and awards that recognize contributions to the freedom of expression and journalism, and on special observance days and campaigns that highlight the vital role of journalism and a free press. Several States also provided information on declarations and press statements recognizing the work of journalists, and publicly condemning attacks against them, as well as on conferences and events held in relation to freedom of expression and the safety of journalists. For example, Austria, Poland and Switzerland organized an international conference on the safety of journalists, in Warsaw in 2013. Trinidad and Tobago referred to the International Press Institute World Congress that it hosted in 2012. Tunisia mentioned the World Press Freedom Day 2012 conference that it hosted.

46. Luxembourg pointed out that its lawyers and magistrates receive training on the rights of journalists and media workers as part of their education, and that its basic courses for police officers contained modules on human rights and the rights and responsibilities of civil servants. The Russian Federation stated that it had held training sessions for journalists and media workers on working in crisis situations. Georgia reported that, in cooperation with United States Agency for International Development and OSCE, it provided training to media professionals and the police to enhance the safety of journalists, including during public demonstrations (ibid., para. 28).

47. Norway reported that the Norwegian Union of Journalists and the Association of Norwegian Editors had conducted a survey on harassment, threats and violence against media workers, how Norwegian newsrooms dealt with such acts, and the level of investigation and prosecution of such cases. This resulted in the production and distribution of a leaflet to all media and newsrooms with advice on how to handle threats and violence.

V. Conclusions and recommendations

48. **The Secretary-General is deeply concerned about the upward trend in the number of journalists killed in recent years, and the increased targeting of journalists and media workers to silence them. The Secretary-General calls upon States to systematically condemn all harassment, intimidation and violence against journalists and media workers.**

49. **States must take all possible measures to close the gap that exists between international standards for the protection of journalists, as reflected in**

international human rights and international humanitarian law, and the actual implementation of those standards domestically.

50. The Secretary-General notes with grave concern that impunity for attacks against journalists remains the biggest obstacle to effectively ensuring the safety of journalists. It is therefore imperative that States ensure that investigations into threats and attacks are conducted effectively, promptly, thoroughly, independently and impartially, and that prosecutions are brought where supported by evidence. They must also provide remedies to victims.

51. The Secretary-General welcomes measures taken by States to ensure the safety of journalists and media workers, and to uphold the right to freedom of expression. States should do their utmost to establish an enabling environment for journalists and media workers, so that they can fulfil their role effectively and without undue interference. This requires fostering a general culture of respect for human rights, the rule of law and democracy.

52. States should ensure that the right to freedom of expression, and the safety of journalists as a component thereof, is integrated into the post-2015 development agenda. Ensuring the freedom of expression and the safety of journalists is an integral part of broader justice reforms and rule of law initiatives.

53. States should continue to share, examine, reinforce and replicate good practices in ensuring the safety of journalists and media workers, where appropriate, with the support of United Nations field presences. Several studies and reports (e.g., A/HRC/24/23 and A/HRC/27/35) have provided a compilation of such good practices, notably in the areas of political commitment, legislative framework, prevention and awareness, early warning and protection and combating impunity.

54. The Secretary-General strongly encourages States to take the opportunity of the International Day to End Impunity for Crimes against Journalists (2 November) to raise awareness regarding the issue of safety of journalists and launch concrete initiatives aimed at combating impunity for attacks against journalists and media workers.

55. States are encouraged to fully cooperate with the specific mechanisms and initiatives for the safety and protection of journalists and media workers created by regional organizations. Where it does not exist, States should consider establishing a regional mandate on freedom of expression and the safety of journalists. Regional organizations and mechanisms are encouraged to develop specific guidelines on the safety of journalists and media workers.

56. The United Nations human rights system is encouraged to continue focusing on the safety and protection of journalists. Relevant human rights treaty bodies and special procedures are called upon to pay systematic attention to the issue. The universal periodic review provides a unique opportunity to engage with States on the freedom of expression and the safety of journalists and media workers.

57. United Nations peacekeeping and special political missions are encouraged to pay particular attention to the issue of the safety of journalists and media workers in the context of their protection of civilians mandates.

58. **UNESCO has played an important role in coordinating United Nations action with regard to the issue of the safety of journalists, including by spearheading the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. States and regional organizations are encouraged to continue working with UNESCO and support the Plan.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, submitted in accordance with Human Rights Council resolution 17/1.

* A/69/150.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

The present report is divided into three main sections: an introduction, an outline of the activities undertaken by the Special Rapporteur during the reporting period and an assessment of the first decade of the mandate on trafficking in persons, especially women and children. In follow-up to the report of the Special Rapporteur to the Human Rights Council (A/HRC/26/37), the present report draws the attention of the General Assembly to the major areas of focus and main achievements during the first decade of the mandate, the contribution to key conceptual and legal gains and the challenges of the past 10 years. In conclusion, the Special Rapporteur offers recommendations to future mandate holders, States and others on how to advance the work of combating trafficking. Finally, the basic principles on the right to an effective remedy, which were finalized through consultations with States and other stakeholders and written submissions, are presented (see annex).

I. Introduction

1. The present report makes reference to the activities of the Special Rapporteur on trafficking in persons, especially women and children, from 1 August 2013 to 31 July 2014. Its thematic section provides an assessment of the first decade of the mandate of the Special Rapporteur on trafficking in persons, especially women and children.

II. Activities of the Special Rapporteur

2. Besides the activities carried out from 1 August 2013 to 28 February 2014, already presented in her report to the Human Rights Council (A/HRC/26/37), the Special Rapporteur carried out the following activities from 1 March to 31 July 2014.

3. On 4 and 7 April, the Special Rapporteur took part in an international ecumenical consultation on the theme of "Migration and human trafficking: modern slavery" in Colombo, organized by the Commission of the Churches on International Affairs of the World Council of Churches and the Christian Conference of Asia.

4. On 28 and 30 April she participated in the fourth workshop of the Association of Southeast Asian Nations (ASEAN) on the theme of "Criminal justice responses to trafficking in persons: support to victims of trafficking in criminal justice systems", which was held in Kuala Lampur and organized by the Australia-Asia Program to Combat Trafficking in Persons.

5. On 21 and 22 May, the Special Rapporteur convened the second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms in Bangkok.[1]

6. On 13 June, the Special Rapporteur presented her thematic report and reports of her visits to Morocco, Italy, Seychelles, Bahamas and Belize during the interactive dialogue at the twenty-sixth session of the Human Rights Council. On the same day, she convened a side event on the main highlights of the first decade of the mandate, which was attended by Member States, civil society organizations and United Nations bodies. On 12 June, she delivered a keynote address at a side event, jointly organized by Austria and the Republic of Moldova, on the role of national, regional and international mechanisms to fight trafficking in persons.

7. On 15 July, the Special Rapporteur delivered a keynote address at a high-level event in New York on the theme of dignity for victims of human trafficking, organized by the Group of Friends United against Human Trafficking and the United Nations Office on Drugs and Crime to mark the observation of the first World Day against Trafficking in Persons on 30 July.

[1] Additional details on this meeting are available from www.ohchr.org/EN/Issues/Trafficking/Pages/2ndConsultativeMeeting2014.aspx.

III. Thematic analysis: the first decade of the mandate of the Special Rapporteur on trafficking in persons, especially women and children

8. In follow-up to her thematic report, presented during the twenty-sixth session of the Human Rights Council (A/HRC/26/37), the Special Rapporteur wishes to draw the attention of the General Assembly to her assessment of the first 10 years of the mandate and present additional feedback from Member States and other stakeholders received after her interactive dialogue with the Human Rights Council.

A. The first decade of the mandate of the Special Rapporteur on trafficking in persons, especially women and children

1. Definition and scope of trafficking in persons

9. Trafficking in persons was defined internationally for the first time in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), as consisting of three elements: (a) an "action", being recruitment, transportation, transfer, harbouring or receipt of persons; (b) a "means" by which that action is achieved, for example threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and (c) a "purpose" of the intended action or means, namely exploitation. All three elements must be present to constitute trafficking in persons in international law. The only exception is that when the victim is a child, the "means" element is not part of the definition.

10. That definition affirmed that trafficking is much wider in scope than previously envisaged; that it can take place for a wide range of end purposes, including, but not limited to, sexual exploitation; that it can involve men and boys, as well as women and girls, as victims; and that it can take place across borders or within a country, including the victim's own. The scope of the mandate of the Special Rapporteur also includes trafficking in children for sexual purposes, child labour, adoption and participation in armed conflict; trafficking in men for forced labour, organized crime and other exploitation; trafficking in women and girls for forced marriage, sexual exploitation and forced labour; and trafficking in persons for the removal of organs (A/HRC/10/16, para. 16 and Corr. 1). A number of partners of the mandate have highlighted the substantive contribution that has been made to expanding the discourse in relation to the identification and exploration of different forms and manifestations of exploitation related to trafficking.

2. The mandate

11. The mandate of the Special Rapporteur was established by the Commission on Human Rights in 2004 (resolution 2004/10) to focus on the human rights aspects of the victims of trafficking in persons, especially women and children. Since then the mandate has been renewed three times by the Human Rights Council, in 2008 (resolution 8/12), 2011 (resolution 17/1) and at the twenty-sixth session of the Council in June 2014. In those resolutions, the Council required the Special

Rapporteur to (a) seek and receive information from States, human rights bodies and other relevant sources and respond effectively to such information; (b) submit reports, together with recommendations on practical solutions with regard to the implementation of the relevant rights; (c) examine the human rights impact of anti-trafficking measures with a view to proposing adequate responses; and (d) work closely with other mechanisms of the Human Rights Council, the United Nations, regional organizations and victims and their representatives. The establishment of the position of Special Rapporteur, with an explicit mandate to address the human rights aspects of trafficking, affirmed on behalf of the international community two key principles: first, that the human rights of trafficked persons should be at the centre of all efforts to combat trafficking; and second, that anti-trafficking measures should not adversely affect the human rights and dignity of all persons concerned. From 2004 to 2007, the mandate was held by Sigma Huda, from 2008 to 31 July 2014 by Joy Ezeilo and the third Special Rapporteur, Maria Grazia Giammarinaro, appointed by the Human Rights Council in June 2014, assumed her functions on 1 August.

3. Working methods

12. Since the inception of the mandate, the mandate holders have adopted a human rights-based and victim-centred approach in addressing all forms of trafficking and its victims, as well as focusing on causes and vulnerability factors, such as poverty, inequality and discrimination. The fulcrum of the work of the mandate holders has relied specifically on 11 pillars: the "five Ps" (protection, prosecution and prevention, punishment of perpetrators and promotion of international cooperation); the three "Rs" (redress, rehabilitation and reintegration); and the three "Cs" (capacity, coordination and cooperation). The working methods of the mandate are set out below.

13. The participatory and collaborative methodology adopted by the mandate holders has enabled them to benefit from engagement with a wide range of stakeholders, including international, regional and subregional bodies working on trafficking issues; the private sector; and persons and institutions with particular expertise, such as the medical and transplant communities. Greater visibility of the mandate, through cooperation and partnership with States and stakeholders, was further identified by a number of States and stakeholders as an element which enables the mandate holder to fulfil the role of the moral voice for trafficking in persons in an independent manner. Interaction with victims of trafficking has also been critical, drawing from real experiences and ensuring that the measures taken to address trafficking benefit those in need; that unintended harmful consequences are anticipated and avoided; and that opportunities for change and improvement are identified in a timely way.

14. Thematic studies have also been a major focus of the work of the mandate holders. Topics for study have been chosen on the basis of their relative importance and urgency, as well as the capacity of the Special Rapporteur to make a contribution to shaping international standards, developing practical solutions and promoting awareness in the chosen area. Issues covered in this way have included measures to discourage demand (E/CN.4/2006/62 and A/HRC/23/48); trafficking for forced marriage (A/HRC/4/23); victim identification, protection and assistance (A/64/290); regional and subregional cooperation in promoting a human rights-based approach to trafficking (A/HRC/14/32); prevention of trafficking (A/65/288);

the right to an effective remedy for trafficked persons (A/HRC/17/35); the administration of criminal justice in the cases of trafficked persons (A/HRC/20/18); trafficking in supply chains (A/67/261); and trafficking in persons for the removal of organs (A/68/256).

15. At the national level, the thematic reports of the Special Rapporteur have been used by some States (including some that have not so far been visited by the Special Rapporteur) and civil society organizations to elaborate or strengthen institutions and policies; as reference documents for further research; and to raise awareness of the topic covered.[2] Some stakeholders have noted that the thematic issues covered in the annual reports of the Special Rapporteur have been reinforced by a number of resolutions on combating trafficking adopted by the Human Rights Council and the General Assembly, which have contributed to wider sensitization and implementation. Moreover, the Special Rapporteur also welcomes with appreciation the decision of the General Assembly in resolution 68/192 to designate 30 July as the World Day against Trafficking in Persons, in the context of the need for raising awareness of the situation of victims of human trafficking and for the promotion and protection of their rights. She also recognizes the two new international legal instruments on forced labour that the International Labour Organization adopted in June 2014: the Protocol of 2014 to Convention No. 29 (1930) concerning Forced or Compulsory Labour and Recommendation No. 203 (2014) on supplementary measures for the effective suppression of forced labour. Many of their key provisions, including those addressing remedies, the protection of victims from punishment for crimes they were compelled to commit and protection from abusive recruitment practices, echo the themes and substantive areas of focus of the work of the Special Rapporteur.

16. Regional and subregional bodies addressing the issue of trafficking in persons also considered the mandate holder as a strategic partner and complemented the initiatives taken, with a view to promoting and harmonizing anti-trafficking approaches. For example, the co-chairs of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes, have played an important role in supporting the right to an effective remedy for trafficked persons within the framework of the process. That has included the development of a policy guide on trafficking in persons, aimed at assisting countries to implement international obligations.

17. Country visits have further helped to ground the mandate holders' understanding of the problem of trafficking in national realities and to forge relationships with those on the front line, while also providing the States concerned and their partners with an opportunity to access information, expertise and insight. Between 2004 and 2014 country visits were undertaken to Bosnia-Herzegovina and Lebanon in 2005 (E/CN.4/2006/62/Add.2 and Add.3); to Bahrain, Oman and Qatar in 2006 (A/HRC/4/23/Add.2); to Belarus, Poland and Japan in 2009 (A/HRC/14/32/Add.2, Add. 3 and Add.4); to Egypt, Argentina and Uruguay in 2010

[2] For example, during the interactive dialogue with the Special Rapporteur at the twenty-sixth session of the Human Rights Council, representatives of Armenia, Belgium, Burkina Faso, Brazil, Ecuador, Ethiopia, Maldives, Malaysia, Myanmar, Israel, India, Indonesia, Iran (Islamic Republic of), Sierra Leone, Spain, Mongolia, Sri Lanka and Viet Nam stated that all or some of their anti-trafficking institutions, policies and laws had been reinforced in conformity with the international definition of trafficking.

(A/HRC/17/35/Add.2, Add.3 and Add.4); to Thailand and Australia in 2011 (A/HRC/20/18/Add.1 and Add.2); to the United Arab Emirates, Gabon and the Philippines in 2012 (A/HRC/23/48/Add.1, Add.2 and Add.3); to Morocco, Italy, Bahamas and Belize in 2013 (A/HRC/26/37/Add.3, Add.4, Add.5 and forthcoming Add.6); and Seychelles in 2014 (A/HRC/26/37/Add.7).

18. The impact of country visits on anti-trafficking efforts at the national, regional and international levels has also been noted by partners.[3] In this regard, the Special Rapporteur was pleased to learn that the recommendations she made to Member States, following country visits, for reforming national legislative and anti-trafficking policy frameworks in line with international norms had largely been implemented. This has meant shifts in policy and practice around trafficking. For example, in Morocco, a new migration policy includes measures to address trafficking in persons; in Japan, the action plan to combat trafficking in persons now covers all elements of the international definition of trafficking and includes specific provisions for trafficking in men and boys; in Australia, the national action plan to combat human trafficking and slavery is set to address a number of her recommendations; and in Belarus, the national plan of action for gender equality includes measures for the protection of, and assistance to, victims of trafficking. The establishment of, or amendments to, national anti-trafficking laws in conformity with the definition in the Palermo Protocol and the ratification of international and regional instruments for the protection of victims of trafficking were also positive achievements following a country visit by the Special Rapporteur. In that regard, States, including Australia, Lebanon, Seychelles and Thailand, have promulgated new national legal instruments addressing various aspects of trafficking in persons while others, such as Belarus, Bosnia and Herzegovina and Japan, have amended the relevant anti-trafficking provisions in existing laws. Recommendations concerning the establishment or strengthening of national rapporteurs on trafficking, and equivalent mechanisms, and cooperation with civil society organizations were, for the most part, followed up. In a number of countries, interministerial anti-trafficking committees have been established and services, including hotlines and shelters, to provide assistance to victims of trafficking put in place (Japan, Lebanon, Seychelles). Examples of how States have strengthened their partnerships with authorities in source, transfer and destination countries include bilateral agreements entered into with other States, as was done by Bosnia and Herzegovina and Thailand, or by supporting various anti-trafficking programmes in source countries such as Japan. A number of countries have also strengthened collaboration with civil society organizations in the provision of assistance to victims of trafficking and the development of national referral guidelines for the identification of, and support to, victims in a coordinated manner.

19. The Australia-Asia programme to combat trafficking in persons, launched in 2013 to strengthen criminal justice responses in the ASEAN region, is another example of States strengthening partnerships among themselves to address trafficking in persons. Capacity-building of front-line officers dealing with trafficking, the allocation of resources and the establishment or strengthening of data collection mechanisms are also areas which have received attention by States following a visit by the Special Rapporteur. Several international organizations have

[3] The Special Rapporteur is grateful for the information provided by the Governments of a number of the countries she visited on the follow-up actions that have been taken to implement her recommendations.

noted that country visits have provided valuable opportunities for stakeholders to convey their views and insights to the higher levels of Government and that the subsequent reports were an excellent source of useful, high-quality information and advocacy tools.

20. In addition, country visits have enabled the mandate to disseminate information systematically about, and advocate for, the ratification and implementation of regional norms and standards related to trafficking in persons. For example, the Special Rapporteur was pleased to learn that after her visit, Italy transposed into its national legislation directive 2011/36/EU of the European Parliament and Council on preventing and combating trafficking in human beings and protecting its victims. Furthermore, the Organization for Security and Cooperation in Europe (OSCE) noted that the country reports of the Special Rapporteur were an excellent source of information for its work, including the preparation of the country visits of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings.

21. Through recommendations and checklists, the Special Rapporteur has actively sought to promote normative clarity around trafficking and helped flesh out the substantive content of key rules and obligations. That work has been firmly based on existing international standards, as recognized in the major human rights treaties and the specialist anti-trafficking instruments. A major output of that aspect of the work of the Special Rapporteur is a set of basic principles on the right to an effective remedy for victims of trafficking that she has developed after extensive consultation with stakeholders in all regions. The principles seek to bring clarity to the concept of this right and its application (see A/HRC/17/35 and A/HRC/26/18). She has also outlined a series of clear and practical recommendations for businesses and States to help them eliminate trafficking in the supply chain (A/67/261) and a draft set of benchmarks and indicators for ensuring that supply chains are free of trafficking (A/HRC/23/48/Add.4), which were prepared following consultation with business experts.

22. The meetings, events and consultations convened by the Special Rapporteur on a variety of topics have unanimously been identified as one of the good practices developed in the course of the mandate towards a continuous dialogue with all stakeholders, including those beyond the traditional actors. Besides serving as a platform for the exchange of ideas, such events contribute to the establishment and maintenance of networks of diverse stakeholders from different regions to continue learning from and promoting each other's work. Civil society organizations have appreciated participating in such events, which has raised the visibility of their work and given it added impetus at the regional and international levels.

23. With regard to national rapporteurs and equivalent mechanisms, the Special Rapporteur wishes to mention specifically the outcomes of the two consultative meetings she convened in 2013 and 2014 in order to foster partnerships and enhance collaboration, in fulfilment of General Assembly resolutions 59/166, 61/144, 63/156, 64/293, 68/186 and 68/192 and in follow-up to reports to the Human Rights Council by the Special Rapporteur and to the Economic and Social Council by the High Commissioner for Human Rights (see, for example, E/2002/68/Add.1, A/HRC/10/16 and Corr. 1 and A/HRC/26/37/Add.1) and directives of the European Union, including directive 12011/36EU. According to statements made by participants at the twenty-sixth session of the Human Rights Council and the

responses to a questionnaire sent out by the Special Rapporteur, those outcomes were highly appreciated. The establishment of an informal network of such mechanisms from all over the world in order to address trafficking in persons consistently, exchange information and best practices and build on different national experiences was one of the main outcomes of those meetings. Other recommendations included the need for a global baseline study in order to better understand the roles of national rapporteurs and equivalent mechanisms and provide guidance for their work.

24. Action on communications and urgent appeals is another method whereby the Special Rapporteur responds effectively to reliable allegations of human rights violations, with a view to protecting the rights of actual or potential victims of trafficking. In accordance with established procedures, the Special Rapporteur communicates the case to the Government concerned, requesting clarification and action, either through an allegation letter or through an urgent appeal where the alleged violation is time-sensitive and/or of a very grave nature.

25. The role of the communications procedure has been recognized by many as a tool enabling the mandate holder to enter into a dialogue with Governments on alleged human rights violations committed against trafficked persons. Since the mandate was established, a total of 99 communications have been sent (out of which 92 were sent jointly with other mandate holders) and a total of 54 responses received from States. An assessment of the replies of States demonstrates that in the majority of cases they are willing to examine the alleged violation and provide clarification and information on actions taken. Civil society and other organizations have also found that this mechanism can be used as an advocacy tool for raising issues at an international level and protecting the rights of victims of trafficking.

26. In line with the engagement of the mandate holder with non-State actors in the fight against trafficking in persons, she has directly engaged with businesses in order to contribute to a culture of corporate responsibility by addressing issues such as labour trafficking, the supply chain and demand. For example, the mandate holder, jointly with other relevant mandate holders, including the Working Group on business and human rights, issued communications to businesses requesting clarification of allegations of trafficking in persons within their operations. She has also used such communications as an important mechanism for raising awareness of the different tools that can be used to ensure that the supply chain is free from trafficking.

B. Major areas of focus and main achievements

27. The Special Rapporteur has identified five areas of cross-cutting concerns, aspects and manifestations of trafficking that have emerged as major themes of importance to the anti-trafficking movement as a whole, namely: (a) the right of victims to assistance, protection and support; (b) the right of victims to remedies; (c) human rights in the criminal justice response; (d) the prevention of trafficking — identifying the core strategies; and (e) trafficking in persons for the removal of organs. It should be noted that the breadth of the work of the Special Rapporteur is considerable and the present report does not include all substantive areas dealt with by the mandate holders.

1. Rights of victims to assistance, protection and support

28. In line with the rights-based and victim-centred approach, the mandate holders have focused strongly on elaborating the legal dimensions of the rights of victims to assistance, protection and support, and in considering the extent to which those rights are respected and protected in practice. It is abundantly clear that States are indeed required to provide immediate assistance and support to victims of trafficking within their jurisdiction and to protect them from further harm.[4]

29. In order to achieve this, a swift and accurate identification of victims is fundamental to the realization of the rights to which they are legally entitled (see A/64/290, para. 91). Mandate holders have drawn attention to the failure of criminal justice systems to identify trafficking victims, who are often simply treated as criminals, arrested and deported with no opportunity to be identified and provided with the necessary assistance as trafficked victims" (ibid.).[5] The Special Rapporteur has consistently advocated for more thorough and collaborative approaches to victim identification, including between victim support agencies and front-line officers (see A/HRC/20/18, paras. 45-53).

30. The Special Rapporteur has also systematically raised concerns about the low identification rates and provision of appropriate assistance to men and boys who have been trafficked, which is a widespread problem in many States.[6] The continuing strong focus on trafficking for sexual exploitation at the expense of a focus on trafficking for labour exploitation, the reluctance of male victims of trafficking to self-identify (for cultural and other reasons) and the inaccessible, or not properly adapted, support provided to them are possible reasons for the slow recognition of the issue of trafficking in men.

31. In addition, the Special Rapporteur has regularly upheld the importance of the now widely accepted principle that victims of trafficking should not be punished, or indeed prosecuted, "for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts" (CTOC/COP/WG.4/2009/2, para. 12(b)).[7]

2. Right of victims to remedies

32. Since the inception of the mandate, the mandate holders have clearly affirmed the right of victims of trafficking to access effective remedies for the harms committed against them. That has been the subject of systematic and detailed attention by the Special Rapporteur, because trafficked persons are frequently left without remedies or the support necessary to access them, a situation that exacerbates the risk of further human rights violations. To that end, she has developed a set of basic principles on the right to effective remedies for victims of trafficking. The process for developing such principles started in 2009 with an expert meeting, an online discussion forum and two thematic reports to the Human

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[4] See *Commentary on the Recommended Principles and Guidelines to Human Rights and Human Trafficking* (United Nations publication, Sales No. E.10.XIV.1), pp. 141-151.

[5] See also A/HRC/20/18, paras. 23 and 24, E/CN.4/2005/71 para. 10, E/CN.4/2006/62/Add.3, paras. 47, 58, 63 and 64.

[6] See A/HRC/23/48/Add.2, paras. 62 and 92; A/HRC/23/48/Add.1, para. 81 (v); A/HRC/17/35/Add.4, para. 85; A/HRC/14/32/Add.3, para. 61; A/HRC/14/32/Add.4, para. 43, and A/HRC/26/37/Add.4, para. 6.

[7] See also A/HRC/20/18, paras. 23-30 and 89; A/65/288, para 20; and A/64/290, para. 95.

Rights Council and the General Assembly in 2011 on this topic, where the draft set of basic principles were presented for the first time (A/HRC/17/35 and A/66/283). Following the adoption of Human Rights Council resolution 20/1, the draft basic principles underwent a highly participatory process of consultation aimed at seeking inputs and suggestions from Member States and a variety of other stakeholders to refine the principles (see A/HRC/26/18). In 2013 and 2014, the Special Rapporteur convened five regional and two global consultations jointly organized with the Office of the United Nations High Commissioner for Human Rights. The principles were then revised on the basis of the views expressed during those consultations and some 30 written submissions from States and other stakeholders during the same period. They were presented in a revised and final version to the Human Rights Council at its twenty-sixth session in June 2014 (see A/HRC/26/18, annex, and the annex to the present report).

33. The basic principles on the right to an effective remedy for trafficked persons are firmly based on established rules of international law. While States are not usually the direct source of trafficking-related harm, they may not absolve themselves of legal responsibility on this basis (see A/66/283, para. 12). Rather, the obligation to provide remedies, or at least access to remedies, to victims of trafficking is set out in a number of relevant instruments[8] and has been widely recognized by United Nations bodies and regional courts.[9]

34. In order to realize fully the rights of victims to effective remedies, States must meet both substantive and procedural obligations. The Special Rapporteur has recognized four substantive components of the right to a remedy that are applicable in cases of trafficking in persons: restitution, rehabilitation, compensation and satisfaction and guarantees of non-repetition.[10] The procedural obligations, as conceived by the Special Rapporteur, are the range of measures needed to guarantee access to an effective remedy, including access to information, legal assistance and regularization of residency status, which contribute to the realization by trafficked persons of the substantive components of the right to an effective remedy. The Special Rapporteur has come to appreciate that certain preconditions must be fulfilled if the right to a remedy for victims of trafficking is to be realized in practice. They include improvements in identification procedures; the institution of a "reflection and recovery" period, during which victims can receive legal and other assistance; and a review of any legal obstacles to access.

35. In response to requests by States for greater clarity as to when international law mandates the right to remedy, section I of the principles (rights and obligations) clarifies the obligation of the State to provide a right to remedy, including restitution, compensation, rehabilitation and recovery, satisfaction and guarantees of non-repetition, when it commits an internationally wrongful act, meaning either that the harm is attributed to the State or it has failed to exercise due diligence. The basic principles also emphasize the importance of bilateral and multilateral cooperation between States, enabling them thereby to meet their obligations on the right to

[8] See the Palermo Protocol, art. 6 (6) and the Council of Europe Convention on Action against Trafficking in Human Beings, art. 15.

[9] See, for example, *Rantsev v. Cyprus and Russia*, European Court of Human Rights, application No. 2595/04, judgement of 7 January 2010.

[10] See the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the General Assembly in resolution 60/147.

remedy, as well as of the principle of non-refoulement and access to asylum procedures as components of the right to an effective remedy. Section II (on access to the right to a remedy) defines other procedural elements of the right to remedy and, in response to the submissions received, further clarifies areas, such as the nature of assistance necessary for access to remedies, the scope of the reflection and recovery period and ensuring equal access to the right to remedy, including through gender-sensitive mechanisms. The principle of non-punishment of victims of trafficking in persons and the rights to safety, privacy and confidentiality have also been added as a result of the consultative process. Section III (on forms of the right to remedy) addresses the substantive elements of the right to remedy and now incorporates international law definitions of each of the forms of the right to remedy, further detail on operationalizing the remedies of restitution, compensation, rehabilitation and recovery and new paragraphs on the remedies of satisfaction and guarantees of non-repetition. Section IV (on the right to remedy for child victims of trafficking) clarifies the additional elements necessary to ensure a human rights-based approach for trafficked children, including the scope of the requirement to give due weight to a child's views.

3. Human rights in the criminal justice response

36. Over the course of the mandate, the Special Rapporteur has noted that the development of the Palermo Protocol within a framework of crime control has raised understandable concerns that the focus would diminish the attention and commitment due to the human rights of victims. She believes that there should be no conflict between the rights of victims and the responses of the criminal justice system. Administration of justice systems must be geared towards guaranteeing access to justice to victims, providing an effective remedy, promoting respect for the fundamental human rights of victims, including offenders, and ensuring adequate protection and assistance to victims of trafficking in order to prevent revictimization and avoid the danger of being retrafficked (A/64/290, para. 99). Moreover, in recognition of the pressing problems associated with the responses of the criminal justice system and the lack of available guidance, the report of the Special Rapporteur on a rights-based approach to the administration of criminal justice affirmed the obligation of States to criminalize trafficking; to investigate and prosecute trafficking with due diligence; and to provide for appropriate penalties (see A/HRC/20/18).

4. Prevention of trafficking: identifying core strategies

37. The mandate holders have always accepted that the concept of prevention encompasses the full range of measures aimed at preventing future acts of trafficking from occurring. That includes the international legal requirement that States act with due diligence to prevent trafficking and the human rights violations with which it is associated. While the mandate holders have examined the general concept of prevention and particular aspects of a preventive approach, including addressing demand and supply chain transparency and accountability (see A/65/288, paras. 29-38, A/HRC/23/48 and A/67/261), they have not been able to address them in full. Rather, they have sought to raise awareness of some issues among States, such as the ones set out below, and others that will help contribute to a greater understanding of what is required and how it may be achieved.

38. With regard to safe migration, the creation of opportunities for legal, gainful and non-exploitative migration is crucial for preventing future trafficking and is a responsibility that falls on countries of origin, as well as on countries of destination. It is important to ensure that safe migration efforts are developed and implemented within a human rights framework, in order to ensure that basic rights, such as freedom of movement and the prohibition on discrimination, are not compromised.

39. The mandate holders have ascertained that the failure to protect the rights of workers, and in particular migrant workers, is a major contribution to exploitation related to trafficking. By way of prevention, the Special Rapporteur has repeatedly called on States to strengthen enforcement of labour laws and build the capacities of labour inspectorates to supervise workplaces, including common sites of exploitation for trafficked persons such as brothels, private homes, farms and small factories, and take steps to regulate the recruitment agencies, which along with the legitimate businesses that use their services, are profiting handsomely from the exploitation of migrant workers.

40. Awareness-raising campaigns concerning the plight and rights of trafficked persons can also be important methods of prevention for at-risk communities and the public in countries of destination, transit and source. However, the Special Rapporteur has noted that public awareness campaigns are sometimes crude in conception and execution, employing sensationalist scare tactics or designed to stop people from moving. There has also been very little critical examination of the effects of such campaigns, including the unintended negative effects of prevention efforts.

41. Trafficking feeds into a global market that seeks out cheap, unregulated and exploitable labour and the goods and services that such labour can produce. The mandate holders have affirmed that international law requires States to discourage the demand that fosters exploitation related to trafficking.[11] The Special Rapporteur has examined demand in detail in the context of prevention (A/65/288, paras. 29-38) and in a dedicated report (A/HRC/23/48). In the latter report, she recommended that States take steps to understand the nature of demand and develop human rights-based measures to discourage it, based on accurate information and experience. She also noted that measures to address demand should not in themselves negatively affect individual rights and freedoms.

42. The mandate holders have maintained a strong focus on non-State actors and the role they can or should play in preventing and responding to trafficking in the supply chain through public-private partnerships. The direct engagement of the Special Rapporteur with business corporations through research and wide-ranging consultations has resulted in the adoption of tools for businesses and States to ensure that supply chains are free of trafficking (see para. 20 above).

43. Consistent with the commitment of the mandate to tackling difficult, emerging and under-researched issues, the Special Rapporteur has focused her attention on trafficking in persons for the removal of organs as a form of exploitation related to trafficking, with a view to contributing to the international conversation at a pivotal point. Her report to the General Assembly on the issue (A/68/256) was based on an

[11] See the Palermo Protocol, art. 9 (5) and the Council of Europe Convention on Action against Trafficking in Human Beings, art. 6.

expert background paper, peer-reviewed by an informal group of transplant specialists, ethicists and researchers.

C. Contribution of the mandate to key conceptual and legal gains

44. The main contributions of the mandate holders to key conceptual and legal gains include a broader focus on the parameters of the definition of trafficking in persons and on the obligations and responsibilities of States, and greater clarity regarding the rights of victims of trafficking.

45. With the benefit of an agreed definition of trafficking in persons, new international, regional and national laws, clearer policies and heightened political commitment, the mandate holders have been able to make a critical contribution at a unique moment in time. They have actively embraced and advocated for the definition of trafficking that is now enshrined in international law through the Palermo Protocol and other instruments and is now reflected in the laws of many States. That approach has been instrumental in helping to expand the focus of international and national anti-trafficking efforts beyond the previous focus on trafficking for the exploitation of prostitution and in contributing to greater conceptual clarity around the definition of trafficking.

46. Furthermore, an assessment of the extent to which a situation, initiative or response is in conformity with international human rights law is possible if the human rights of victims of trafficking can be asserted with a sufficient level of detail by specifying what those rights actually are and what obligations they impose upon States. That task is made somewhat more difficult by the fact that the central international instrument relevant to trafficking, the Palermo Protocol, is not clear on the issue of the rights of victims. There are general references to human rights in the Protocol and it includes a number of obligations that may be understood as intended to protect victims. However, on its own, it makes little headway in establishing the precise nature of the entitlements of victims and how they should be satisfied. It is also relevant to note that when the mandate was first instituted, the international human rights system itself had not contributed substantially to clarifying the substantive content of the relevant rights and obligations. While there was regular condemnation of the human rights violations associated with trafficking, the practice was rarely linked to the violation of a specific right in a specific treaty. Throughout all aspects of their work, from country missions to thematic studies, the mandate holders have helped to confirm and promote awareness of those important rights and provided greater clarity regarding the rights of victims.

47. To gain clarity regarding the obligations and responsibilities of States, the mandate holders have examined the implications of the legal obligation on States to take steps to prevent trafficking, detailing actions that should be taken within the framework of a human rights approach (A/HRC/10/16, paras. 45-47 and Corr. 1). The mandate holders have also been very clear that the obligations of States extend beyond those that relate immediately to victims. For example, in relation to the responses of the criminal justice system, the obligation on all States to investigate and prosecute trafficking and the obligation to protect the rights of suspects and the right to a fair trial has been confirmed (see, for example, A/HRC/20/18, para. 71 and A/HRC/20/18/Add.2, para. 77 (h)). With regard to the link between corruption and trafficking, the mandate holders have also highlighted in their country visit reports

that States are required to act in preventing such corruption and dealing with it once it is uncovered (see, for example, A/HRC/20/18, para. 90, and A/HRC/20/18/Add.2, paras. 72 and 73).

D. Challenges

48. The work of the mandate holders has confirmed that the problem of human trafficking continues to be endemic in all parts of the world. While awareness of trafficking and of relevant rights and obligations has improved significantly, it has not resulted in substantial improvements on the ground. Large numbers of women, men and children continue to be exploited; very few receive support, protection or redress; few of the perpetrators are apprehended; and in every country the number of prosecutions remains stubbornly low. It is thus pertinent to draw out the challenges that are likely to be of particular concern to the international community and to the holders of the mandate as it evolves in the future.

49. The issue of clarifying the parameters of trafficking in the international legal definition is one of the obstacles to a more effective response to trafficking in persons, as it would be a mistake to assume that the adoption of the definition has ended discussion around the parameters of trafficking. In fact, there is a continuing vigorous debate within and among States and other actors over what conduct is or is not defined as "trafficking".

50. Strengthening the accountability of non-State actors and the involvement of civil society in combating and preventing trafficking in persons, including lessening the tensions between civil society groups working on trafficking and Governments, is another challenge. Furthermore, while the Special Rapporteur recognizes the power of the media in raising community awareness of trafficking in all its forms and informing vulnerable groups about certain risks, she notes repeated examples of media sensationalism, manifested for example through a prurient and overly narrow focus on sexual exploitation. Failure to protect the privacy of victims adequately; the stigmatization of victims; and fostering confusion between trafficking and other phenomena, such as irregular migration and migrant smuggling, represent further difficulties.

51. Securing compliance mechanisms at the national, regional and international levels is a further challenge. The mandate holders have drawn attention to worrying gaps between the obligations of States with regard to trafficking (what States are required to do or refrain from doing) and the extent to which those obligations are met in practice (what actually happens). That is particularly the case with regard to the rights of victims, which, despite being protected by international and national laws, are often disregarded. That is not always the result of a lack of political will. The complexity of the trafficking phenomenon, uncertainty about aspects of the solution and the fact that States are rarely the direct perpetrators of trafficking-related harm, all complicate the task of securing compliance with international legal rules. Moreover, national implementation mechanisms that address trafficking in persons on the basis of a rights-based and victim-centred approach are often weak.

52. The Special Rapporteur generally welcomes the unilateral compliance mechanism established by the Office to Monitor and Combat Trafficking in Persons of the Department of State of the United States of America, which undertakes an annual assessment of the trafficking situation in States worldwide and the quality of

national responses. However, she cautions that the criteria used to assess national performance should be explicitly based on international standards. That is not just essential to the credibility of the mechanism, it is also an important way to strengthen the international legal framework and affirm its key standards.

53. Partners have emphasized that the mandate holders could make a further contribution to the understanding of trafficking in persons by continuing to provide greater clarity on emerging and new forms of trafficking. Some themes proposed in this regard include trafficking for the purpose of forced labour (outside the sex sector), begging, criminality and forced marriage. The issue of trafficking of men and boys and the link between trafficking and corruption were also proposed. Further research on trafficking in persons for the purpose of organ removal and on prosecutions and punishments was deemed useful to determine the types of penalty imposed on traffickers and to what extent they acted as a deterrent. A focus on strengthening the accountability of non-State actors and the engagement of civil society in the efforts to combat trafficking in persons was also suggested.

54. Given the interlinkages between the mandates of the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on the human rights of migrants, enhanced collaboration could be sought through regular consultations and joint thematic studies to discuss conceptual issues, such as the adoption of children.

55. Partners have also suggested that the development of indicators for evaluating the impact of anti-trafficking efforts and tools for victim identification could be considered in the future work of the mandate holders, as well as further engagement with the Inter-Agency Coordination Group against Trafficking in Persons and strategic cooperation with the media sector.

IV. Conclusions and recommendations

56. **The Human Rights Council is to be congratulated for its wisdom and foresight in establishing a mechanism that has ensured human rights retain their rightful place at the centre of the international response to trafficking. That role has been particularly important in light of the fact that the key international treaty on trafficking was established outside the human rights system. States and partners, including United Nations bodies, intergovernmental organizations, national human rights institutions and civil society, surveyed as part of the preparation for this report, have affirmed the positive impact of the mandate holders on their work and on the work of combating trafficking in general. They have drawn particular attention to the contribution of the Special Rapporteur to standard-setting; to mainstreaming human rights into the anti-trafficking discourse; and to drawing attention to emerging and less well-known forms of trafficking.**

57. **On this basis, the Special Rapporteur offers the following recommendations.**

58. **Future mandate holders could focus on conceptual and definitional overlaps; the consequences of a human rights-based approach to trafficking;**

measuring the impact of anti-trafficking interventions, corruption and trafficking; and the effectiveness of victim identification tools. They should:

(a) Consider undertaking studies in relation to emerging areas of concern, such as illicit recruitment practices, trafficking in men for forced and exploitative labour, trafficking for forced begging and criminal activities, trafficking for forced or servile marriage and return and the risk of retrafficking. They should also consider giving further attention to trafficking in persons for the removal of organs in continuation of the initial work undertaken by the Special Rapporteur;

(b) Continue cooperating with international, regional and national mechanisms to combat trafficking in persons, in consultation with victims. That could also include regularly convening consultative meetings with national rapporteurs and equivalent mechanisms;

(c) Consider enhancing collaboration with the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on the human rights of migrants, to capitalize on common interests and approaches;

(d) Continue promoting implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and relevant regional instruments, as well as other standards and policies related to trafficking in persons, including endorsing the draft basic principles on the right to an effective remedy for trafficked persons and encouraging States to incorporate them into national legislation;

(e) Continue promoting the involvement of civil society in all international and regional anti-trafficking forums, including discussions on the review mechanism for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

59. States and stakeholders should continue using communications, which generally provide an important vehicle to remind States individually of their international legal obligations with respect to responding effectively to trafficking and ensuring that the rights of victims under their jurisdiction or control are protected and respected.

60. While noting the non-binding nature of the basic principles on the right to an effective remedy for trafficked persons, the Special Rapporteur recommends that the Human Rights Council or the General Assembly endorse them and that Member States incorporate them into their national legal frameworks, so that they can become a living tool for practitioners in their anti-trafficking work.

Annex

Basic principles on the right to an effective remedy for victims of trafficking in persons

I. Rights and obligations

1. Victims of trafficking in persons, as victims of human rights violations, have the right to an effective remedy for any harm committed against them.

2. All States, including countries of origin, transit and destination, shall provide adequate, effective and prompt remedies to victims of trafficking in persons, including non-citizens, within their territory and subject to their jurisdiction, when the State is legally responsible for any harm committed against them; this includes when harm is attributable to the State or when the State has failed to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, and to assist and protect victims of trafficking in persons. The right to effective remedy includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

3. Regardless of whether a State is responsible for the original harm, the State shall provide and/or facilitate access to remedies as required by binding international law, including anti-trafficking instruments and international human rights law.

4. The right to an effective remedy shall be provided to victims of trafficking in persons without discrimination in law or in practice on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status, including their age, their immigration status, their status as victims of trafficking in persons, their occupation or the types of exploitation to which they have been subjected.

5. The right to an effective remedy encompasses both the substantive right to remedies and the procedural rights necessary to secure access to them. The right to an effective remedy reflects a victim-centred and human rights-based approach that empowers victims of trafficking in persons and respects fully their human rights.

6. Bilateral and multilateral State cooperation is an important means enabling States to meet their obligations with regard to the right to an effective remedy for victims of trafficking in persons.

II. Access to the right to a remedy

7. Whether States are legally responsible for harm or otherwise have an obligation to provide and/or facilitate access to remedies under international law, procedural rights and preconditions for remedies include that victims of trafficking in persons:

(a) Have a legally enforceable right to have access to remedies, including through criminal, civil, labour or administrative proceedings, irrespective of the victim's immigration status, return to his or her country of origin or absence from the jurisdiction. This includes the right of victims of trafficking in persons to have effective access to asylum procedures;

(b) Are promptly and accurately identified, including through adequate procedures and appropriate training for State officials and cooperation between relevant authorities and non-governmental organizations;

(c) Are fully and promptly informed, in a language and form they understand, of their legal rights, including their right to have access to remedies, the remedies available, and procedures for obtaining remedies;

(d) Are provided with a reflection and recovery period, whether as identified or presumed victims, with access to such services as housing and psychological, medical, social, legal, employment, professional and material assistance. Following the said reflection and recovery period, a victim of trafficking in persons should be provided with any residence status necessary, such as to allow the victim of trafficking to exercise his or her right to remain during proceedings or as a form of restitution;

(e) Are provided with assistance necessary to have access to remedies, regardless of their immigration status, including medical, psychological, social, administrative and qualified linguistic and legal assistance, such as free legal aid;

(f) Are not detained, charged or prosecuted for activities that are a direct consequence of their situation as victims of trafficking in persons, including for violations of immigration law;

(g) Have a right to remain lawfully in the country in which the remedy is being sought for the duration of proceedings, without prejudice to any claim they may have to the right to remain on a more permanent basis as a remedy in itself;

(h) Have equal access to the right to remedy, including by ensuring that all investigations, prosecutions and other mechanisms are gender-sensitive; take into full account the different assistance and protection needs of women, men, girls and boys; address sexual and gender-based violence appropriately; ensure that victims are able to come forward to seek and obtain redress; prevent discriminatory evidence and afford equal weight to the testimony of women and girls; and avoid trauma, revictimization and stigmatization;

(i) Have access to remedies that is not dependent upon their capacity or willingness to cooperate in legal proceedings;

(j) Have their rights, and the rights of their families and witnesses, to safety (including from intimidation and retaliation), privacy and confidentiality protected before, during and after proceedings.

III. Forms of the right to remedy

A. Restitution

8. States shall provide restitution that, whenever possible, restores the victim to the original situation before the trafficking except in circumstances that place the victim at risk of being retrafficked or of further human rights violations.

9. Restitution includes, as appropriate:

(a) Restoration of liberty, including release of the victim from detention;

(b) Enjoyment of human rights and family life, including reunification and contact with family members;

(c) Safe and voluntary repatriation to one's place of residence, if applicable;

(d) Temporary or permanent residence status, refugee status or third-country resettlement on such grounds as the inability of States to guarantee that return is safe for victims of trafficking in persons and/or their families, respect for the principle of non-refoulement, the risk of retrafficking and the risk of reprisals;

(e) Recognition of the victim's legal identity and citizenship;

(f) Restoration of the victim's employment;

(g) Assistance and support to facilitate social integration or reintegration of repatriated victims;

(h) Return of property, such as identity and travel documents and other personal belongings.

B. Compensation

10. States shall provide victims of trafficking in persons with compensation for any economically assessable damages as appropriate and proportional to the gravity of the violation and the circumstances of each case. Mere difficulty in quantifying damage shall not be invoked as a reason to deny compensation.

11. Forms of compensation include, as appropriate:

(a) Damages for physical or mental harm;

(b) Damages for lost opportunities, including employment, education and social benefits;

(c) Reimbursement of costs of necessary transportation, temporary child care, temporary housing or the movement of the victim to a place of temporary safe residence;

(d) Payment for material damages and loss of earnings, including loss of earning potential, lost income and due wages according to national law and regulations regarding wages;

(e) Moral or non-material damages resulting from moral, physical or psychological injury, emotional distress, pain or suffering;

(f) Reimbursement of legal fees and other costs or expenses incurred, including those incurred relating to the participation of the victim in criminal investigation and prosecution processes;

(g) Reimbursement of costs incurred for legal or expert assistance; medicine and medical services; physical, social, psychological or psychiatric treatment or services; or any occupational therapy or rehabilitation required by the victim;

(h) Reimbursement for any other costs or losses incurred by the victim as a direct result of being trafficked and as reasonably assessed by the relevant body or bodies.

12. States shall ensure that laws, mechanisms and procedures are in place to enable victims of trafficking in persons to have access to compensation, including:

(a) To sue offenders or others for civil and/or labour damages;

(b) To secure awards or orders from criminal courts for compensation from persons convicted of offences;

(c) To provide access to established national funds or schemes for victims of crimes and/or to establish dedicated funds or schemes for victims of trafficking in persons to claim compensation from the State for damages, including when compensation cannot be obtained from perpetrators;

(d) To freeze and confiscate the instruments and proceeds of trafficking, including for the purposes of supporting and compensating victims of trafficking in persons;

(e) To enforce reparation judgements, including foreign judgements.

C. Rehabilitation and recovery

13. States shall provide victims of trafficking in persons with the means necessary for their rehabilitation and recovery, including medical and psychological care, as well as legal and social services, such as shelter, counselling, health services and linguistic support.

14. States shall ensure that the access of victims of trafficking in persons to rehabilitation and recovery measures is not dependent on their capacity or willingness to cooperate in legal proceedings.

D. Satisfaction

15. States shall provide satisfaction as a non-financial form of reparation designed to compensate moral damage or damage to the dignity or reputation of the victims of trafficking in persons.

16. Satisfaction should include any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victim of trafficking in persons, the victim's relatives, witnesses or persons who have intervened to assist the victim or to prevent the occurrence of further violations;

(c) An official declaration or a judicial decision restoring the dignity, reputation and the rights of the victim of trafficking in persons and persons closely connected with the victim, according to the circumstances of the case;

(d) Public apologies, including acknowledgement of the facts and acceptance of responsibility;

(e) Judicial and administrative sanctions against persons liable for the violations.

E. Guarantees of non-repetition

17. States shall provide guarantees of non-repetition of trafficking in persons to combat impunity and prevent future violations. Such measures include, where applicable, any or all of the following:

(a) Ensuring the effective investigation, prosecution and sanctioning of traffickers;

(b) All measures necessary to protect the victim of trafficking in persons from retrafficking, including through safe return, temporary or permanent residence status where applicable, and integration support;

(c) Providing or strengthening the training of law enforcement, immigration and other relevant officials in the prevention of trafficking in persons;

(d) Strengthening the independence of the judiciary;

(e) Modifying legal, social and cultural practices that cause, sustain or promote tolerance to trafficking in persons, including gender-based discrimination and situations of conflict and post-conflict;

(f) Effectively addressing the root causes of trafficking, such as poverty, gender inequality and discrimination;

(g) Promoting codes of conduct and ethical norms, in particular international standards, for public and private actors, including to promote public-private partnerships against trafficking in persons;

(h) Protecting legal, medical, health-care and other related professionals and human rights defenders who assist victims of trafficking in persons.

IV. Right to remedy for child victims of trafficking

18. In addition to the above, the State shall provide and/or facilitate access to remedies for child victims of trafficking by ensuring that:

(a) The best interests of the child are a primary consideration, taking into account the individual circumstances of the child, including age, gender, degree of maturity, ethnic, cultural and linguistic background, and protection needs. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and be treated as such until his or her age is verified;

(b) A child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, and the views of the child are given due weight in accordance with the child's age and maturity. To enable participation by the child, States should provide trafficked children with accessible information on all matters affecting their interests, such as their situation, rights, services available and all remedies, including the processes of family reunification and/or repatriation;

(c) Procedures for obtaining access to and enforcing remedies are effective, child-sensitive and readily accessible to children and their representatives, including legal guardians appointed to represent the interests of the child;

(d) Child victims of trafficking are provided with appropriate physical, psychosocial, legal, educational, health-care and safe and suitable housing assistance and protection (including protection during legal proceedings), taking into full account their age and special vulnerabilities, rights and needs;

(e) Adequate and appropriate training on the specific needs, rights and vulnerabilities of child victims, particularly legal and psychological training, is provided for persons working with child victims of trafficking.

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Groups of countries in special situations: follow-up to the Fourth United Nations Conference on the Least Developed Countries

Strengthening investment promotion regimes for foreign direct investment in the least developed countries

Report of the Secretary-General

Summary

The present report has been prepared in response to General Assembly resolution 67/220, in which, inter alia, the Assembly called for the preparation of a report focusing on national policies and regulatory frameworks for stimulating foreign direct investment in least developed countries and outlining options and modalities for investment promotion regimes for least developed countries.

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I. Introduction

1. In the Programme of Action for the Least Developed Countries for the Decade 2011-2020,[1] participants stressed that policies to attract and retain foreign investment are essential components of national development strategies. The present report focuses on such policies by the least developed countries, home countries of foreign direct investment (FDI) and other stakeholders. It provides a brief overview of recent trends and patterns in FDI flows to least developed countries, takes stock of the policies, programmes and measures pursued by host and home countries and by international organizations to stimulate FDI flows to and increase their benefits for least developed countries and, finally, outlines some options for national and international action for strengthening such efforts. The emphasis is on policies and measures relating specifically to FDI, but it is important to remember that the broader policy framework of macroeconomic, trade, industrial, social and environmental policies of host countries can be important in determining the outcomes of efforts to stimulate and benefit from inward FDI. Similarly, well-crafted incentives and facilitatory measures by the home countries and other stakeholders can play a critical role in significantly increasing FDI flows to least developed countries and maximizing their developmental impact on the host country.

II. Foreign direct investment in least developed countries: an overview

Trends and relative importance

2. According to data by the United Nations Conference on Trade and Development (UNCTAD),[2] FDI flows to least developed countries as a group have risen steadily since the turn of the century. Average annual FDI flows to such countries amounted to $25 billion in the period 2011-2013, more than three times the average flows of $8 billion in 2001-2003 (see annex). That rate of increase was slightly lower than that in FDI flows to all developing countries, which rose from an average of $196 billion per year to $744 billion per year, but was higher than the average annual FDI flows worldwide, which rose to slightly more than double their value between the two periods. Reflecting the growth in inflows, the stock of FDI in least developed countries grew from $42 billion in 2001 to $211 billion in 2012.

3. Although the least developed countries accounted for just 1.7 per cent of the total world FDI inflows in the period 2011-2013, and 3.3 per cent of inflows of FDI to developing countries, FDI is more important relative to domestic investment in those countries than in developing countries as a group. In 2011-2013, FDI inflows as a percentage of gross fixed capital formation stood at 13 per cent in least developed countries, as compared with 9 per cent in all developing countries, 8 per cent in developed countries and 9 per cent in the world as a whole (see annex). The stock of FDI relative to gross domestic product (GDP) in 2012 was 23 per cent in least developed countries, as compared with 30 per cent in all developing countries, 33 per cent in developed countries and 32 per cent worldwide.

[1] *Report of the Fourth United Nations Conference on the Least Developed Countries, Istanbul, Turkey, 9-13 May 2011* (A/CONF.219/7), chap. II.

[2] Available from http://unctadstat.unctad.org.

4. FDI flows are by far the largest private capital flows to least developed countries. In fact, in the period 2001-2010, private capital flows other than FDI, mainly portfolio investment and bank lending, were close to zero.[3] Furthermore, from 2006 onwards, FDI flows to those countries exceeded bilateral official development assistance (ODA), that is, ODA excluding that from multilateral organizations, and reached more than half of the amount of total ODA that they received. However, as sources of finance, the two cannot entirely be substituted for one another, since ODA is for development support, while FDI looks for profit-making opportunities. Yet despite the small size of FDI flows to least developed countries, the trends in and the relative importance of those flows signal that such countries are becoming more attractive investment destinations. This nascent dynamism is also reflected in the growth of outward FDI from least developed countries.

Geographic and sectoral distribution

5. The 34 African economies among the least developed countries accounted for some 79 per cent of the inward FDI flows of all least developed countries in 2010-2013, the 14 Asia-Pacific economies for 20 per cent, and the Caribbean island of Haiti for 1 per cent (see annex). More than four fifths of the flows in 2011-2013 went to the top 10 recipients, namely, Mozambique, the Sudan, the Democratic Republic of Congo, Myanmar, Equatorial Guinea, the United Republic of Tanzania, Zambia, Bangladesh, Cambodia and Uganda, in that order.

6. FDI in the least developed countries has traditionally been directed largely towards natural-resource extraction. However, there are signs that this may be changing. Although data are lacking on the sectoral distribution of FDI flows and stock, data on the estimated value of greenfield FDI projects, which account for the bulk of FDI in least developed countries, show major inter-sectoral changes. During 2003-2010, the shares of the primary, manufacturing and services sectors in the estimated value of greenfield FDI projects were 55 per cent, 28 per cent and 17 per cent, respectively. In 2011-2013, the shares stood at 21 per cent, 28 per cent and 51 per cent, respectively.[4] These shifts are associated with fledgling structural changes in some least developed countries.[5]

7. There are distinct signs that the geographical distribution of FDI in least developed countries by source country is also changing. Judging from a comparison of the value of FDI projects in those countries by source region in 2003 and 2010,[3] as measured by the value of net cross-border merger and acquisition sales plus that of greenfield projects, although FDI from Europe continued to account for the largest share, at 20-30 per cent, and that from developed countries as a group for over 50 per cent, the share of FDI from developing and transition economies had risen considerably, from around 25 per cent to over 40 per cent.

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[3] See United Nations Conference on Trade and Development (UNCTAD), *Foreign direct investment in least developed countries: lessons learned from the decade 2001-2010 and the way forward* (New York and Geneva, 2011).

[4] UNCTAD, *World Investment Report 2013: global value chains: investment and trade for development* (Geneva, 2013), and UNCTAD, *World Investment Report 2014: investing in the sustainable development goals: an action plan* (Geneva, 2014).

[5] Office of the United Nations High Representative for the least developed countries, landlocked developing countries and small island developing States, *The state of the least developed countries 2013* (New York, 2013).

8. While investment in the least developed countries from several emerging economies, including China, India, Malaysia and South Africa, is on the rise in both absolute and relative terms, the increase of FDI from China is particularly striking. Between 2003 and 2008, Chinese FDI flows to least developed countries rose from $45 million to $981 million, and, in 2008, 34 such countries received Chinese FDI.[3] In 2012, the Lao People's Democratic Republic, Cambodia and Angola were the top host economies among the 27 least developed countries to receive FDI from China,[6] reflecting the fact that, while extractive industries attract large amounts of Chinese FDI, other industries are important targets for it as well. Data for 2011-2013 show that developing economies accounted for 46 per cent of the estimated value of inward greenfield FDI projects in the least developed countries.[4]

9. In recent years, India has been the leader among developing countries in terms of greenfield FDI in least developed countries, with nearly $8 billion in announced greenfield investments in those countries in 2012-2013, followed by South Africa and Nigeria. China topped the list of countries, developing and developed, in terms of FDI through cross-border mergers and acquisitions in least developed countries, accounting for nearly $6 billion of cross-border mergers and acquisition sales in least developed countries in 2012-2013.[7]

Determinants of foreign direct investment

10. The location-specific factors motivating firms with the necessary ownership-specific and internalization advantages to engage in direct investment abroad have been classified as natural resource-seeking, market-seeking, efficiency-seeking and created asset-seeking.[8] Whether firms with such advantages and motivations choose one location or another for their FDI depends on the attractiveness of potential host countries in terms of the location-specific advantages sought by firms.

11. The least developed countries, with their relatively low GDP per capita and as-yet low degree of development of their human assets, can be considered to be at a relative disadvantage in attracting FDI, in the first stage of what has been called the investment-development path,[9] except perhaps when the resources sought are natural, as in the case of agriculture or mining. While the resource-seeking motivation, primarily in mining, quarrying and petroleum but also land, for example, in Cambodia, has indeed been the largest driver of FDI in least developed countries, the sectoral distribution of FDI shows that it is not the only one, and there are signs that its relative importance is diminishing. That indicates that those countries have other competitive advantages as locations for FDI, or can develop and strengthen such advantages, except for created assets that require strong technological capabilities.

12. The least developed countries, particularly those with large populations, can offer possibilities for market-seeking FDI in other manufacturing industries, such as the food, beverages and tobacco industry, which attracted $1 billion in greenfield

[6] See http://unctad.org/Sections/dite_fdistat/docs/webdiaeia2014d3_CHN.pdf.

[7] UNCTAD, *World Investment Report 2014: investing in the sustainable development goals: an action plan* (Geneva, 2014).

[8] J. Dunning and S. Lundan, *Multinational Enterprises and the Global Economy* (Cheltenham, 2008).

[9] R. Narula and J. Dunning, "Multinational enterprises, development and globalization: some clarifications and a research agenda", from *Oxford Development Studies*, Volume 38, No. 3 (September 2010).

FDI projects in their economies in 2011-2012. They can, moreover, attract FDI to services such as electricity, gas and water, transport, storage and communications, and financial services (especially banking), which attracted noticeable amounts of FDI through greenfield projects in the least developed countries in 2011-2013.[4] Judging from the data on FDI stock and annual flows, it seems that a substantial portion of announced infrastructure investments in the least developed countries in the period 2003-2013 did not generate FDI inflows, indicating that project shares could be shared among different types of sponsors and that a large part of foreign sponsors' investment commitments were financed with non-equity modes of investments by transnational corporations, debts, structured finance, or bilateral and multilateral donor funding. Finally, least developed countries can also obtain efficiency-seeking FDI in low-cost labour-intensive manufactures for export, as suggested by the experience of Bangladesh and Cambodia in the ready-made garment industry.[10]

Outward foreign direct investment from least developed countries

13. Traditionally, the attention of policymakers has been on inward FDI and its role in contributing to development, in particular by building internationally competitive domestic capacity. However, the international competitiveness of domestic firms can also be strengthened through outward FDI, which provides firms with better access to foreign markets to produce and, hence, deliver goods and services to those markets, including through trade-supporting outward FDI. Furthermore, outward FDI provides firms with better access to resources, such as know-how, technology and management experience, thereby helping to increase the competitiveness of parent firms. For these reasons, all developed countries, and a rising number of developing countries, support their firms seeking to invest abroad.

14. A number of least developed countries have also become home countries for outward FDI, with 24 of them having reported some outward FDI flows during 2010-2013 (see annex). This suggests that some of their domestic firms have built up competitive advantages for international production as well. In 2011-2013, average annual flows of FDI from least developed countries amounted to over $4 billion, nearly 19 times those in 2001-2003 (see annex). African least developed countries, led by Angola and Liberia, with 75 per cent of the total, accounted for most of the outflows. Although these outflows are very unevenly distributed, this is a phenomenon that deserves attention from policymakers.

III. Policies, programmes and measures to stimulate foreign direct investment flows to least developed countries and increase host-country benefits: a stocktaking

Host-country policies, programmes and measures

15. The least developed countries have been making strong efforts to attract increased FDI flows, including by liberalizing national policies with respect to

[10] See UNCTAD, *World Investment Report 2013: global value chains: investment and trade for development* (Geneva, 2013), and Julia Kubny and Hinrich Voss, *The impact of Chinese outward investment: evidence from Cambodia and Viet Nam* (German Development Institute, Discussion Paper 16/2010).

inward FDI, entering into bilateral, regional and other international investment agreements and double taxation treaties, establishing investment promotion agencies or similar other institutions, and improving the overall environment for business. As in several other developing countries, the dominant trend towards liberalizing and promoting investment has been accompanied by a move towards fostering a regulatory framework for investment in general and FDI more specifically that takes into account countries' particular development goals and concerns, generally through industry-specific incentives or conditions and targeted promotional efforts.

The national policy framework

16. Most of the least developed countries are now open to FDI in a wide range of activities, as indicated by their laws and regulations. Indeed, most least developed countries have adopted laws relating to FDI and some have revised their investment legislation. Those to do so most recently are the Lao People's Democratic Republic (through its Investment Promotion Law of 2009), South Sudan (through its Investment Promotion Act of 2009), Liberia (through its Investment Act of 2010), Timor-Leste (through its Private Investment Law of 2011), Malawi (through its Investment and Export Promotion Act of 2012), Myanmar (through its Foreign Investment Law of 2012 and rules of 2013) and the Sudan (through its Investment Act of 2013). However, there are a number of specific prohibitions and restrictions. For example, in the Sudan, there are restrictions on foreign investment in transportation, media and communications, electricity, and financial services. Some industries, such as railway freight transportation, airport operation and newspaper publishing, are closed to foreign participation. In Bangladesh, investors in natural resources and infrastructure, including power, mineral resources and telecommunications, must seek approval from the relevant government ministries. In South Sudan, companies with fewer than seven employees are reserved for national owners and medium-sized and large private companies are required to have at least 31 per cent national ownership. In Cambodia, all sectors are open to foreign investment and 100 per cent foreign ownership is permitted in most. In Haiti, foreign investors are permitted 100 per cent ownership of companies and can enter into joint ventures of any kind with Haitian citizens, but the sale and purchase of company shares are regulated by the State. Angola, since 2012, requires transnational oil corporations operating in the country to use local banks, including affiliates of foreign banks, to pay their taxes and make payments to foreign suppliers and subcontractors. The objective is to strengthen the development of the national banking system, which has already grown considerably, partly due to FDI in the industry. In several least developed countries, foreign enterprises receive treatment no less favourable to that provided to national domestic enterprises. Examples of countries providing national treatment include Afghanistan, Burkina Faso, Burundi, Mali, Mozambique, the Niger, Sao Tome and Principe, Senegal and Zambia. There are some exceptions, however, as in the case of land ownership. For example, in Benin, Equatorial Guinea, the Lao People's Democratic Republic, Myanmar and Rwanda, foreign investors are not permitted to own land, but they can lease it.

17. Fiscal and other incentives are provided to foreign investors in several least developed countries. Bangladesh, for example, offers foreign investors tax holidays and exemptions, reduced import duties on capital goods, machinery and spare parts and duty-free imports for 100 per cent exporters of ready-made garments. In Haiti, investment that provides added value of at least 35 per cent in the processing of

local or imported raw material is eligible for customs, tax and other advantages. The Sudan's new Investment Act of 2013 offers tax and customs privileges to investors in strategic industries.[11] Other examples of countries that have introduced tax incentives include Burundi, Malawi, Sao Tome and Principe and Zambia.[3]

International framework

18. Many least developed countries have entered into bilateral investment treaties, which generally provide for national treatment, most-favoured-nation treatment and fair and equitable treatment of investors, nationalization only under specific conditions, and unrestricted transfers of capital and earnings. As at June 2013, all but six of the least developed countries had signed one or more such treaties, with Bangladesh (29), Mozambique (24), Senegal (24), Ethiopia (29), the Sudan (27) and Yemen (37) having the largest number.[12]

19. Most of the least developed countries have also made provisions, typically through bilateral investment treaties, for the resolution of disputes with foreign investors. A majority (37) of them are members of the International Centre for Settlement of Investment Disputes. Several are open to dispute settlement under the United Nations Commission on International Trade Law, and several have adhered to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Some are members of other international dispute settlement mechanisms, such as the Organization for the Harmonization of African Business Law. Benin, for example, is a member of that organization and its Common Court of Justice and Arbitration, as well as of International Centre for Settlement of Investment Disputes.

20. Most least developed countries are parties to one or more regional economic agreements with FDI provisions. In the African region, such agreements include the Common Market for Eastern and Southern Africa, the Southern Africa Development Community, the Economic Community of West African States, and the West Africa Economic and Monetary Union. In Asia and the Pacific, regional agreements include the Comprehensive Investment Agreement of the Association of Southeast Asian Nations (ASEAN) and the ASEAN-China Investment Agreement. The South Asian Association for Regional Cooperation is in the process of finalizing the text of its draft agreement on promotion and protection of investment, for signature at its eighteenth summit, scheduled to be held in November 2014. Haiti is a member of the Caribbean Community, which brings together 15 states in the Caribbean into a single market and economy. At the interregional level, 40 least developed countries are members of the partnership agreement between the members of the African, Caribbean and Pacific States and the European Union, also known as the Cotonou Agreement. The Agreement provides, among others, for financial cooperation measures that the African, Caribbean and Pacific States and the European Community and its member States should put in place to promote investment and encourage the European Union private sector to invest and to provide specific assistance to its counterparts in the African, Caribbean and Pacific countries under mutual cooperation and partnerships. It calls for financial support to investors, investment guarantees and investment protection. The Agreement has also

[11] UNCTAD, *World Investment Report 2013: global value chains: Investment and trade for development* (Geneva, 2013).

[12] See http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-BITs.aspx.

established the Centre for the Development of Enterprise, with the objectives of assisting investment promotion and business cooperation between the European Union and African, Caribbean and Pacific enterprises.

21. At the multilateral level, many of the least developed countries are parties to the General Agreement on Trade in Services, which is relevant for FDI in services, and the agreements on trade-related investment measures and trade-related aspects of intellectual property rights. A majority of the countries are also members of the World Bank Multilateral Investment Guarantee Agency Nearly all are members of the International Labour Organization (ILO), meaning that they are in principle committed to respecting the principles and rights that are the subject of the ILO Declaration on Fundamental Principles and Rights at Work.

22. The least developed countries have also entered into double taxation treaties,[13] mainly with respect to taxes on income and capital. As at June 2011, Yemen (37), Bangladesh (27), the Sudan (27), the United Republic of Tanzania (17), Senegal (14) and Zambia (12) had the largest number of such treaties.

Investment promotion and facilitation

23. Many least developed countries have established investment promotion agencies for promoting and facilitating FDI, while some countries have entrusted the task to boards of investment or specific ministries or government departments. As at 2011, 31 least developed countries had such agencies or other institutions, and 29 of those national investment promotion bodies were members of the World Association of Investment Promotion Agencies.[3] In some cases, for example, in Afghanistan, Mali and Uganda, they serve as one-stop shops for investors.

24. Successful promotion of FDI also requires easily navigable rules, regulations and procedures for business and relatively low costs of doing business. In this respect, only a few of the least developed countries have made noticeable advances. According to *Doing Business* by the World Bank, Rwanda was the only least developed country in the top 50 economy rankings for 2014,[14] and only four others, namely, Samoa, the Solomon Islands, Vanuatu and Zambia, ranked among the top 100. The majority (26) of least developed countries were ranked between 154 and 179. Rwanda's relatively high position in the 2014 ranking reflects the fact that the country has made more progress than any other on the *Doing Business* indicators since 2006, with its overall performance relative to the "frontier" of 100, indicating best performance, rising from 37 to 70.[15] Other least developed countries with considerable improvements relative to the overall performance frontier since 2006 include Burkina Faso, Liberia, Burundi, Mali and Sierra Leone.

25. Investment promotion has been found to have a positive impact on FDI flows to developing countries and to work better in places with higher information asymmetries and bureaucratic red tape. That suggests that investment promotion can play an important role in attracting FDI to the least developed countries, where lack of information can be a major constraint for foreign investors. In addition to establishing investment promotion agencies, some least developed countries are

[13] See http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-DTTs.aspx.

[14] Available from www.doingbusiness.org/rankings.

[15] See www.doingbusiness.org/data/distance%20to%20frontier.

participating in the development of online investment guides as part of a joint project by UNCTAD and the International Chamber of Commerce. As at 2014, such guides had been published for eight least developed countries.

Home-country policies, programmes and measures

26. All developed countries implement, to some degree, policies, programmes and measures to encourage outward FDI flows, and some developing countries and economies in transition have also begun to do so. Such home-country measures are often directed towards encouraging FDI flows to developing countries in general, and some of them are particularly relevant for stimulating FDI flows to, and increasing their benefits for, the least developed countries.

National policies and international arrangements with respect to outward foreign direct investment

27. Virtually all developed countries today allow their firms to invest freely abroad, with few restrictions relating mainly to political or national security considerations. Several developing countries and economies in transition have also liberalized their outward FDI policies, while others are gradually doing so.[16]

28. Virtually all developed countries and the majority of developing home countries have entered into bilateral investment treaties with least developed countries aimed at helping them attract FDI by protecting the investment of the respective home countries' firms in host countries and facilitating their operations there. As at 1 June 2013, the top 10 developed home countries in terms of total outward FDI flows in 2007-2011 had concluded 128 such treaties with least developed countries, while the top 10 developing and transition home economies had concluded 53 treaties with those countries.[17]

Measures to facilitate, support and promote outward foreign direct investment

29. The actual size of outward investment can be influenced considerably by home-country measures that directly assist outward investors. These measures are often intended to advance a home country's strategic economic interests and enhance the international competitiveness of its firms, but a part of the reason for such measures is also to encourage FDI flows to developing countries as a complement to their efforts to attract FDI. To the extent that such measures are applied to investment in least developed countries, they can increase FDI flows to and their benefits for those countries.

30. Home-country measures involve the granting of specific advantages by a home country government (or one or more of its public institutions) in connection with the establishment, acquisition or expansion of an investment by a home country firm in a foreign economy. All developed countries, as well as some developing economies and economies in transition, have established or designated institutions that implement such measures.[16] The most important direct measures used by home governments to facilitate, support and promote outward FDI are the following:

[16] See K. Sauvant et al., "Trends in FDI, home country measures and competitive neutrality", in *Yearbook on International Investment Law and Policy 2012-2013*, Chapter 1 (New York, 2014).

[17] See http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-BITs.aspx.

(a) Information services. These include the provision of data on the economic and legal investment climate, the political environment and business opportunities in host countries; information on the benefits of internationalization and on the legal and economic aspects of international expansion; and the provision of relevant statistics. Other support services include advice and consulting; investment missions; match-making services, including contacts with governments and entrepreneurs in host countries and maintaining matchmaking data bases; and training and educational services related to outward FDI;

(b) Financial measures. These include grants for activities such as feasibility studies and other pre-investment activities; assisting with the costs of setting up overseas offices; training of staff for employment in foreign affiliates; executive programmes for managers; and customized training programmes. They also include loans (concessional and non-concessional), structured financing options, public-private/public-public risk-sharing arrangements, and development financing. Other financial measures include equity participation, direct or as development financing;

(c) Fiscal measures. These include tax exemptions of various kinds, for example, exemption from corporate income tax on certain incomes, and deductions for qualifying expenditures; corporate tax relief; tax deferral for incomes earned overseas; and tax credits for certain kinds of expenditure;

(d) Political-risk insurance. This includes a range of insurance products covering expropriation, war damage, political violence, conversion of local currency or its transfer out of the host country, the suspension of remittances and forced abandonment of assets abroad by home-country investors. It is intended to mitigate risks associated with investing abroad and generally requires the payment of a premium.

31. Direct assistance through the measures assumes greater importance for encouraging FDI in the least developed countries than in other countries, especially because information and knowledge gaps with respect to available opportunities and host-country conditions are likely to be greater in the case of the former, and the need for political risk insurance, as well as financial and fiscal measures, is more acute.

Eligibility conditions for direct support through home-country measures

32. In many countries, the measures for direct support described above are not offered uniformly to all outward investors. The factors described below, namely, the sector or industry in which an investment is made, the size of the investing firm, destination and the effects of outward FDI on host countries, are taken into account to determine whether an investor qualifies for assistance. Some of the conditions used can work to improve FDI flows to least developed countries. For example, preferential support to FDI in natural resources can increase flows to the least developed countries, in many of which extractive industries are the main attraction for FDI.

33. In terms of sector or industry, although there are no stringent sectoral or industrial limitations on support/assistance to outward investors from home country institutions, a number of them specify sectors and industries for support. They typically include natural resources, energy and infrastructure. The emphasis on assistance to outward FDI in natural resources is of relevance to stimulating FDI in

several least developed countries, while that on assistance to FDI in energy and infrastructure is important for those countries generally, as they are in particular need of such investment in order to improve production capacity and accelerate growth.

34. In terms of size, many home countries give additional preferential support to FDI by their small and medium-sized enterprises. Examples include the special financing lines and funds offered to those enterprises by the Spanish financing corporations COFIDES and the Instituto Credito Official and the preferential treatment offered to those enterprises in the United States of America by the Overseas Private Investment Corporation (OPIC) under certain conditions. Such support is likely to be of particular importance for promoting FDI in the least developed countries, which, given their relatively small markets and limited supply of skills and human capital, are more likely to attract FDI by small and medium-sized enterprises, except in natural resources where production is primarily for export.

35. In terms of destination, most home-country measures are available to firms regardless of the destination of their FDI. However, a number of them encourage investment in specific destinations. Many developed countries have specialized agencies to provide long-term financing for private-sector development in developing and transition economies by providing loan and equity financing for FDI projects in those countries, sometimes by taking minority equity positions.[18] The mission of OPIC, for example, is to mobilize and facilitate the participation of private capital and skills from the United States in the economic and social development of developing countries and economies in transition, to complement the development assistance objectives of the United States. In 2012, total commitments by OPIC to projects in low-income countries were $1 billion, while projects in sub-Saharan Africa totalled $907 million, out of a total portfolio of $16.4 billion. Germany's development finance agency, Deutsche Investitions und Entwicklungsgesellschaft mbh, is also placing growing emphasis on assisting investments in Africa, including in sub-Saharan Africa.

36. Some home-country measures cater specifically to FDI in certain geographic regions, in pursuit of national strategies. For example, the China-Africa Development Fund provides financial support for Chinese enterprises investing in Africa. Since its establishment, Chinese FDI in Africa has grown rapidly, rising from an average of $410 million per year in the period 2004-2006 to $3 billion per year in 2010-2012, with flows to sub-Saharan Africa comprising $2.6 billion.[6] In 2013, Japan pledged $6.5 billion support to help infrastructure in Africa and the State-run Japan Oil, Gas and Metals National Corp announced financial support worth $2 billion over the following five years to help Japanese firms with natural resource development projects in Africa.

37. In terms of the effects of outward FDI, home countries may also make their support to outward investment conditional on its effects on the home and/or host countries. It may require positive development impacts on the host country, in terms, for example, of job creation, infrastructure improvements and technology and knowledge transfer. According to its investor screener,[19] Eligibility for support from OPIC requires that a project meet the workers' rights standards of ILO, including the right to unionize, collective bargaining, minimum age requirements and a

[18] UNCTAD, *World Investment Report 2003: FDI policies for development: national and international perspectives* (Geneva, 2003).

[19] Available from www.opic.gov/doing-business-us/our-investor-screener.

prohibition on forced labour. Similarly, according to its guidelines for confirmation of environmental and social considerations,[20] the Japan Bank for International Cooperation conducts a review of environmental and social conditions when making a decision on funding and conducts monitoring and follow-up after the decision has been made. Such conditionality and follow-up have implications for improving host-country benefits from FDI in the least developed countries, where local capabilities for negotiating favourable conditions with foreign investors and monitoring the impacts of FDI are likely to be limited.

Indirect measures by home countries

38. Home countries may pursue measures that are not targeted specifically at outward FDI but nonetheless influence it. For example, official development assistance (ODA) for infrastructure projects in least developed countries may make the countries more attractive to FDI. Such ODA can also lead directly to FDI projects from the donor country, as is the case when donor governments provide finance tied to outward FDI by their firms.

39. Policy measures expanding access to a home country's markets may also indirectly encourage FDI flows from that country as well as others to the countries that enjoy improved access for their exports. One example is the Africa Growth and Opportunity Act of the United States, which, as at 2013, provides preferential access to the United States market for imports from 39 designated sub-Saharan countries. Duty-and quota-free treatment accorded to least developed countries by the European Union under its Everything but Arms arrangement, and similar treatment by some other countries to the exports of least developed countries, have played important roles in attracting FDI to those countries.

Schemes and programmes implemented by international organizations

40. Efforts by host and home countries to boost FDI flows to and the benefits of FDI for the least developed countries are supported and supplemented by schemes and programmes implemented by international and regional organizations, a snapshot of which is provided below.

41. UNCTAD undertakes activities directly dedicated to FDI in least developed countries. In particular, its Investment Advisory Council for those countries, created in 2001 in collaboration with the International Chamber of Commerce, provides senior business executives and senior government officials with an informal and flexible framework for discussing practical ways of attracting FDI and benefiting from it. This work relies partly on UNCTAD statistical work, especially FDI country profiles summarizing key FDI statistics for each least developed country.[3] Moreover, since 2011, the flagship UNCTAD publication, the *World Investment Report*, contains a special section analysing FDI trends in those countries. UNCTAD has been undertaking a project aimed at enhancing the capacity of government agencies as regards the compilation of data on FDI and transnational corporations. So far, it has organized a dozen national workshops in Burundi, Comoros, the Democratic Republic of the Congo, Djibouti, Ethiopia, Malawi, Myanmar, Rwanda, the Sudan, Uganda, the United Republic of Tanzania and Zambia.

[20] Available from www.jbic.go.jp/wp-content/uploads/page/efforts/environment/confirm_en/pdf_01.pdf.

42. As at June 2014, 17 out of the 36 investment policy reviews prepared by UNCTAD had focused on least developed countries. The implementation of the recommendations in the reviews led, among other things, to the creation of an investment promotion agency in Burundi, the establishment of the Presidential Council on Investment in Burkina Faso and the adoption of a skills attraction and dissemination programme in Rwanda. This work is closely linked with UNCTAD advisory services relating to investment promotion, which include the dissemination of practical advice and case studies of best practices in investment promotion among investment promotion agencies in developing countries, including the least developed countries, and international organizations of investment promotion agencies, including the World Association of Investment Promotion Agencies, in which most of those countries are members.

43. Within the World Bank Group, one of the priorities of the Multilateral Investment Guarantee Agency is to encourage FDI into the world's poorest economies, namely, members of the International Development Association, by providing political risk insurance to investors, which is a foremost constraint to foreign investment in developing countries. Political risk, including risks relating to such factors as currency convertibility and fund transfer restrictions, expropriation and war, ranks high among the constraints to foreign investment in developing countries, including the least developed countries. Investment guarantees provided by the Multilateral Investment Guarantee Agency require compliance with a comprehensive set of environmental and social performance standards.[21] The Small Investment Programme of the Agency provides such insurance at discounted premiums, to facilitate investments into small and medium-sized enterprises that are particularly sensitive to political risk. This programme is of special relevance to least developed countries as FDI there, especially in manufacturing and services, is more likely to flow into smaller enterprises. The Agency's facility for conflict-affected and fragile economies covers 36 conflict-affected fragile countries, of which 26, at the start of 2014, were least developed countries. In addition to Agency guarantees, the facility uses donor contributions and guarantees to provide an initial loss layer to insure investment projects in fragile and conflict contexts.

44. Under its advisory services, the International Finance Corporation partners with local governments, justice ministries, lawyers associations, business organizations and donors to address the needs of the private sector in dispute resolution and to assist client countries to develop alternative dispute-settlement mechanisms, including in six least developed countries, namely, Bangladesh, Burkina Faso, Cambodia, the Solomon Islands, the Sudan and Vanuatu.

45. Assessing and improving the investment climate in developing countries, including the least developed countries, is another important activity of the World Bank Group. This includes its *Doing Business* project. The World Bank's Investment Climate Assessments complement this work by identifying key constraints to investment and growth in a country, as well as areas for reform. The facility for Investment Climate Advisory Services funds and supports advisory projects to improve the investment climate. The World Bank Group's Global Investment Promotion Benchmarking exercise gives policymakers a measure of the effectiveness with which a country's investment promotion intermediaries/agencies respond to potential investors and meet the latter's information needs.

[21] Available from www.miga.org/projects/index.cfm?stid=1828.

46. The World Bank has set up a number of trust funds to support countries with large extractive resources, such as the Extractive Industry Transparency Initiative and the Extractive Industry Technical Advisory Facility. The multi-donor trust fund of the Initiative provides resources to countries to implement the Initiative's standards of transparency, while the trust fund of the Facility helps build capacity for governments to negotiate on their own behalf. As at May 2014, Initiative-compliant least developed countries included Burkina Faso, Cameroon, Côte d'Ivoire, Liberia, Mali, Mozambique, the Niger, Sierra Leone, the United Republic of Tanzania, Timor-Leste, Yemen and Zambia.

47. The World Bank launched a new fund in 2012 to help African countries negotiate best possible deals to develop their oil, gas and mineral resources, which is likely to benefit several least developed countries. The World Bank has constraints to finance actual negotiations directly through its trust funds. However, countries may be able to obtain recipient-executed loans or credits from the World Bank to hire their own negotiations support.

48. African countries can also apply for assistance from the African Legal Support Facility, part of the African Development Bank. The Facility provides assistance to African countries to strengthen their legal expertise and negotiating capacity in debt management and litigation, natural resources and extractive industries management and contracting, investment agreements, and related commercial and business transactions. The Facility has sovereign immunity and can negotiate on behalf of client countries.

49. ILO is responsible for the promotion and follow-up of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[22] It provides technical assistance to its member States, especially least developed countries, on better harnessing the potential of FDI and the presence and operations of multinational enterprises for socioeconomic development and sustainable enterprise development. Since 2001, ILO has also been involved in a factory monitoring project, entitled "Better Factories Cambodia", involving the Government of Cambodia, garment manufacturers and trade unions. Similar "Better Works" projects involving ILO are now operating in six other countries, including the least developed countries Haiti and Lesotho, and are planned to be expanded further, including through a project in Bangladesh announced in October 2013. ILO is providing technical assistance to least developed countries such as Angola, Mozambique and Zambia to strengthen sectoral dialogue, with the objective of enhancing the positive contribution of the extractive industries to broader job creation, skills development, economic diversification and local economic development.

50. UNIDO focuses much of its work on FDI in the least developed countries on the Africa Investment Promotion Agency Network. Now covering 38 States, many of which are least developed countries, it is a forum for African Governments to discuss investment promotion strategies. It includes an investment-monitoring platform, which is a tool for analysis of investment data, currently covering 19 African countries, including 14 least developed countries. UNIDO also works with countries to improve their regulatory environment to promote business and

[22] Available from www.ilo.org/empent/Publications/WCMS_101234/lang--en/index.htm.

investment and to strengthen the development impact of FDI, including through partnerships with transnational corporations.

IV. Towards an action plan for foreign direct investment in least developed countries

51. Notwithstanding the efforts of host and home countries and international agencies towards mobilizing FDI to least developed countries for their sustainable development, the least developed countries still receive limited FDI flows in a narrow range of industries. It is therefore important for them, as well as their development partners, including home countries, international and national development agencies, transnational corporations, domestic firms, civil society, to strengthen their ongoing efforts and pursue new and innovative initiatives to increase FDI flows to the least developed countries and enhance host-country benefits of these flows. This could usefully be done in the framework of an action plan for FDI in the least developed countries, such as a comprehensive and coherent aid-for-investment programme, that could contain the elements below.

Actions by the least developed countries

52. The least developed countries need to take further steps towards establishing better rules and regulations governing FDI entry, operations and treatment, so as to encourage larger beneficial FDI inflows to a wider group of industries, especially those that are of particular importance for their development process. They also need to strengthen their investment promotion efforts with respect to FDI in general, as well as with respect to sectors of particular importance to them. Besides focusing on developed home countries, they should also make stronger efforts to attract FDI from developing countries, given the latter's importance in world FDI as well as FDI in least developed countries. Furthermore, the expatriate communities of least developed countries constitute a potential reservoir of FDI. Finally, they should take further steps towards improving the rules, regulations and procedures involved in establishing and operating affiliates of foreign companies, as well as for business in general, drawing upon experiences of other countries and resources available from home countries, development agencies and international organizations.

53. In some industries, especially infrastructure, including electric power, telecommunications, transport and water, the costs are high and the returns uncertain and long-term. Moreover, host countries have an interest in retaining some control. Least developed countries need to consider further implementation of public-private partnerships open to FDI, with host-country financing for such projects drawing upon official development assistance and with ODA participation through a share in the project. More beneficial investment through FDI in traditional modes as well as public-private partnerships can be an important part of resolving the infrastructure and energy-related constraints of the least developed countries.

54. Least developed countries might also consider appointing a FDI ombudsperson in their respective economies, to address foreign investors' grievances and help prevent costly investor-state disputes. As a person respected by the government and the business community, the ombudsperson can serve as an after-care institution in the host economy and can help resolve grievances of foreign affiliates with respect to governments and vice versa, thereby preventing them from escalating into

investor-State disputes. Equally important, by pre-emptively addressing foreign investors' grievances through an ombudsperson, least developed countries can induce the reinvestment of earnings from FDI, which comprise a quarter or more of FDI in their economies.

55. To increase the benefits from FDI, least developed countries could consider launching and/or strengthening linkage programmes,[23] through which local firms become suppliers to foreign affiliates located in host countries. Such linkages are one of the most important mechanisms for domestic firms to acquire the tangible and intangible assets that foreign affiliates typically possess. Since foreign affiliates, especially when part of global value chains, need to produce at the frontier of international competitiveness, they may often be prepared, out of their own self-interest, to help local firms upgrade themselves. As the experience has shown, host-country governments need to help their own firms to become linkage-ready.

56. Another area for action and cooperation relates to the standards and practices host countries require of transnational corporations operating in their economies. Some least developed countries already require adherence to certain specific standards of corporate social responsibility on the part of those corporations operating in their economies.

57. Finally, most least developed countries are members of ILO, meaning that the ILO Declaration on Fundamental Principles and Rights at Work applies, in principle, to them, including as regards employees in foreign affiliates. Those countries could also consider adhering to the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD),[24] so as to minimize the possible negative outcomes of FDI in a range of areas as specified by the Guidelines.

Actions by home countries and other development partners

58. Individual home countries, especially developed ones, have established various measures aimed at helping their firms invest abroad. For virtually all of those measures, home countries should consider making them more attractive to firms that are prepared to invest in least developed countries. Moreover, consideration should be given to link the provision of home country measures to the adherence by the beneficiaries to a core set of social, labour and sustainable development standards. The Multilateral Investment Guarantee Agency criteria for investment guarantees[25] could be a partial model here. Adding to these criteria the requirement of making every reasonable effort to contribute as much as possible to the development of least developed countries would be emulating the best practices of some home countries. The resulting projects would thus acquire the characteristics of "sustainable FDI projects", that is, projects that contribute as much as possible to the economic, social and environmental development of host countries and take place in the context of fair governance mechanisms. The inclusion in international investment agreements of language that provides for countries to encourage firms to observe corporate social responsibility standards can help and is desirable. For example, the Canada-Republic of Korea Free Trade

[23] See UNCTAD, *World Investment Report 2001: promoting linkages* (Geneva, 2001).

[24] Available from http://www.oecd.org/investment/mne/48004323.pdf.

[25] Available from www.miga.org/projects/index.cfm?stid=1822.

Agreement[26] stipulates that each party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and their internal policies, including statements of principle that are endorsed or supported by the Parties. These principles address issues such as labour, environment, human rights, community relations and anti-corruption.

59. The emerging developing countries, which now account for over 40 per cent of total FDI inflows to least developed countries, can help further enhance these flows and benefits therefrom by: (a) adopting dedicated investment promotion measures dedicated to such countries; (b) ensuring the transfer of technical and managerial skills as well as institutional support, especially in regard to infrastructure projects; and (c) promoting linkages with domestic sectors in least developed countries.

60. Individual home countries could also consider providing home-country equity assistance to small and medium-sized enterprises investing in least developed countries by arrangements similar to those in the Netherlands for such enterprises investing in State of Palestine, under which the Dutch Development Organization provides a part of the investment and provides for political-risk insurance.[27]

61. In addition, home countries and other development partners should consider pursuing further initiatives specifically aimed at promoting FDI in the least developed countries and enhancing its benefits for host economies. Examples of such initiatives are shown below.

Providing rapid-response negotiations support

62. Support to least developed countries in negotiating complex large-scale contracts with foreign investors can play a critical part in protecting both host country and investing company interests in a balanced manner. Many large FDI projects, especially those relating to the exploitation of natural resources, infrastructure, privatizations, and public-private partnerships, involve contracts between investors and host-country governments. Most governments of least developed countries do not have the world-class resources required to negotiate fair deals in these areas, and thus may lose the opportunity to maximize the benefits of major FDI projects for their countries, or restrict foreign participation out of fear of the potential negative outcomes from having limited negotiating capabilities. This is all the more important as such contracts typically concern major sources of income for least developed countries, for years to come, and hence can contribute significantly to a self-financed graduation from the status of least developed country. At the same time, unfair contracts are sooner or later likely to lead to a request for renegotiations on the part of host countries, with the risk of disruptions of production and the potential for conflicts. Host countries and transnational corporations therefore have an interest in establishing fair and stable contracts. Support for the least developed countries in contract negotiations, perhaps supported by a revolving fund created on the basis of an initial endowment, could help level the playing field between the least developed countries and transnational corporations with abundant access to negotiating expertise, thereby leading to more durable contracts. Negotiations support requested by least developed countries could

[26] Available from www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/korea-coree/08.aspx.

[27] See, for example, www.miga.org/projects/index.cfm?pid=1292.

encompass an information platform relating to the negotiation of contracts;[28] a referral service for negotiators representing least developed countries who want to obtain information about where they might be able to obtain specific information or assistance; and the capacity to field multi-disciplinary teams within weeks that could help least developed countries anywhere in the world in actual negotiations of complex, large-scale contract negotiations, regardless of the industries involved. Such support should of course leverage existing initiatives to the extent possible, but it should also fill gaps, especially by providing actual negotiations assistance.

63. It is encouraging in this respect that the Group of Seven, at its June 2014 summit, announced a new initiative on strengthening assistance for complex contract negotiations to provide developing country partners with extended and concrete expertise for negotiating complex commercial contracts, focusing initially on the extractives sector, and working with existing forums and facilities to avoid duplication. It also committed to establishing a steering committee led by the Group of Seven to lead the process of improving expert assistance for negotiation support, including identifying any gaps in existing assistance as a first step towards developing rapid response teams to provide contract negotiation assistance to developing countries as soon as it is needed. It would be highly desirable if this improvement of expert assistance could be done as soon as possible, and if priority could be given to negotiating assistance to the least developed countries.

64. At the same time, the least developed countries could commit themselves to a stronger enforcement of contracts signed between them and foreign investors, for example, by becoming signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which obliges contracting States, including the 22 least developed countries that are signatories, to recognize and enforce arbitral awards.

Support for dispute resolution

65. As the least developed countries become hosts to growing FDI in a range of activities and, simultaneously, parties to more international investment agreements, the prospects for treaty-based investment disputes are likely to rise. In fact, as at June 2014, the least developed countries were respondents in 36 such investment disputes. Hence, it would be desirable for home countries to consider the creation of an advisory centre for treaty-based investment disputes, to assist those countries in the handling of such disputes. Such an advisory centre could be patterned on the World Trade Organization (WTO) Advisory Centre on WTO Law, which provides free legal advice to developing countries on WTO law and support in WTO dispute settlement proceedings at discounted rates. Such a centre would not only save costs for the least developed countries that are respondents in such disputes and help them to defend themselves against unjustified claims and the potentially high damages involved, but, by giving those countries a fair chance to benefit from the investor-State dispute settlement mechanism typically included in international investment agreements, it would also strengthen the legitimacy of the international investment law and policy regime, which is under criticism from various quarters. Such a mechanism could also reduce the likelihood of FDI being restricted in some sectors owing to the anticipation of disputes.

[28] See, for example, www.negotiationsupport.org.

Support for Tax Inspectors without Borders

66. FDI and international production bring with them a range of issues relating to taxation that home as well as host countries need to address, and this applies even more to the least developed countries. Abusive transfer pricing and international tax planning by transnational corporations can lead to the erosion of the tax base and the shifting of profits that result in a loss of revenue for a host country as well as a distortion of investment decisions and unintended competitive advantages for those corporations over domestic businesses.[29] In this context, home countries and other development partners should support the Tax Inspectors Without Borders initiative of the OECD and mandate the organization to give priority to the least developed countries in this respect. The initiative aims at enabling the transfer of tax audit knowledge and skills to administrations in developing countries through a "learning by doing" approach, in which experts are deployed to work directly with local tax officials, in tax administrations seeking assistance, on current audits and audit-related issues concerning international tax matters, and to share knowledge of general audit practices. In addition to the transfer of knowledge and know-how, broader benefits from the initiative include the potential for more revenues, greater certainty for taxpayers and the encouragement of a culture of tax compliance through more effective enforcement.

Actions by transnational corporations, local industry and non-governmental organizations

67. The impact of FDI on sustainable development in host least developed countries depends also on the extent to which the foreign affiliates act as good corporate citizens with an interest in promoting sustainable development in their host countries. As noted, some home countries make help to outward investors dependent on meeting certain impact criteria. Similarly, transnational corporations receiving financial support from the International Finance Corporation need to meet its impact criteria for project finance. Those corporations should fully embrace these criteria and also consider observing them when not benefitting from home country measures or its support.

68. Furthermore, transnational corporations should fully commit to and observe, including for their value chains, the above-mentioned OECD Guidelines and the United Nations Guiding Principles on Business and Human Rights, as well as the various other international instruments that seek to encourage good corporate behaviour. The fact that, as at 2013, 8,000 companies had joined the Global Compact, committing to adopting a principles-based management and operations approach, suggests that there is considerable scope for the sharing of non-proprietary knowledge and expertise by foreign affiliates and their parent companies with domestic firms in the least developed countries.

69. At the individual company level, many individual transnational corporations have their own corporate social responsibility policies. It would be desirable if these policies were put on a firmer ground by dedicating a certain percentage of the earnings of parent firms to foreign affiliates in least developed countries, undertaking clearly defined corporate social responsibility activities in their host

[29] Organization for Economic Cooperation and Development (OECD), *Action plan on base erosion and profit shifting* (Paris, 2013).

(least developed) countries, creating in this manner the financial and corporate governance basis for sustainable FDI. Transnational corporations, local firms, business associations and non-governmental organizations in least developed countries need to cooperate in promoting further sharing of ideas, knowledge and expertise through information exchange, meetings and conferences, training programmes for local human resources and other direct actions.

Action by international organizations

70. Given the urgency of accelerating the development process of the least developed countries and helping them graduate from their group, there is a case for extending some of the initiatives already under way in developing countries in general to those countries, or, where these are already eligible, giving priority to them. Consideration should be given, among others, to the following:

(a) Giving priority to the least developed countries in implementing the new initiative of the Group of Seven to assist developing countries in negotiating large-scale complex contracts with foreign investors. Resource-rich least developed countries in all parts of the world are in particular need of such assistance, but so are least developed countries in general that negotiate the terms and conditions for the utilization of their scarce assets in order to get the best possible deal;

(b) Strengthening mechanisms to ensure that transnational corporations and their foreign affiliates operating in the mineral industries adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas,[30] which provides guidance to companies operating in or sourcing materials from conflict-affected and high-risk areas, many of which are LDCs, consistent with applicable laws and international standards;

(c) Extending risk insurance provided by the Multilateral Investment Guarantee Agency and national political risk insurers to global value chain affiliates outside an affected host country. For example, if political instability in a first country leads to a temporary suspension or severe restriction of production in a value-chain foreign affiliate in that country, this would immediately affect the ability of an affiliate in the same value chain in a second country that depends on inputs from its affiliate in the first country. Currently, only the affiliate in the first country would be potentially eligible to benefit from its insurance with the Agency, even though the affiliate belonging to the same supply chain in the second country has been affected. Given that political risk is seen to be high in least developed countries, providing such supply-chain insurance would help these countries to link up with global value chains, arrangements that are increasingly driving not only global investment but also trade. Perhaps consideration could also be given to extending insurance to value-chain interruptions on account of natural disasters;[31]

(d) Drawing the attention of investors in emerging markets to the political risk insurance services of the Multilateral Investment Guarantee Agency. While the Agency's services are well known to investors in developed countries, this is less so in other countries. Such awareness is particularly important because firms from countries not classified as developed by UNCTAD and headquartered in emerging markets

[30] Available from www.oecd.org/investment/mne/GuidanceEdition2.pdf.

[31] See UNCTAD, *World Investment Report 2013: global value chains: investment and trade for development* (Geneva, 2013).

accounted for $550 billion in outward FDI flows in 2013, more than 10 times the global FDI flows during t' 'r: half of the 1980s. However, many investors in emerging markets are not f the Agency's political risk services, which could limit their inclinations to . the least developed countries;

(c) Extending to the least developed countries the International Finance Corporation investor grievance mechanism, in cooperation with host governments. This could help to avoid potentially costly arbitration and thereby contribute towards retaining existing investment, encouraging reinvestment and preventing investor-State disputes. The Corporation should consider making this facility available, on a priority basis, to the least developed countries requesting its implementation.

V. Conclusions and recommendations

71. The promising trends in FDI flows to the least developed countries in recent years and the nascent shifts in their sectoral distribution towards manufacturing and service activities suggest scope for further efforts by the least developed countries, home countries, the international community and others for promoting FDI flows that contribute to these countries' productive capacity-building. Even more importantly, it would be worthwhile for the international community to consider launching an action plan for promoting FDI in the least developed countries and strengthening host-country benefits along the lines noted above.

72. Greater coordination of such efforts can be achieved through a one-stop arrangement, such as an international investment support centre dedicated to the least developed countries. Such a facility, as recommended in the Cotonou Agenda for productive capacity-building in least developed countries,[32] could provide the following interrelated services:

(a) A common information depository containing all relevant information on regulatory, promotion and protection policies and measures by least developed countries, home countries and other stakeholders as relates to FDI in least developed countries;

(b) Contract preparation and negotiating support, in the form of rapid-response negotiations support to assist least developed countries in negotiating complex large-scale contracts with foreign investors;

(c) Advisory support in dispute resolution, in the form of technical support for treaty-based investment disputes to assist least developed countries in the handling of such disputes;

(d) Risk insurance, in the form of facilitating risk insurance and guarantees for investment in least developed countries in close collaboration with the Multilateral Investment Guarantee Agency and OECD.

73. Such a mechanism would aim to fill the institutional gaps in providing coordinated support to least developed countries in the above areas, without duplicating but complementing existing arrangements. It is recommended that the General Assembly considers the establishment of a voluntarily funded international investment support centre for least developed countries under the auspices of the United Nations and also the related institutional and other matters.

[32] Available from http://unohrlls.org/custom-content/uploads/2014/08/Cotonou-Agenda_07_08_2014_.pdf.

Annex

Least developed countries: selected data on inward and outward foreign direct investment

	Average annual FDI inflows (US dollars, millions)		Average annual FDI outflows (US dollars, millions)		FDI inflows as percentage of gross fixed capital formation		Inward FD stock (US dollars, millions)		Inward FD stock as percentage of GDP	
	2001-2003	2011-2013	2001-2003	2011-2013	2001-2003	2011-2013	2001	2013	2001	2013
The least developed countries	**8 046**	**24 854**	**169**	**4 490**	**18.2**	**12.7**	**42 485**	**211 797**	**21.9**	**25.9**
Africa	**7 204**	**19 484**	**118**	**4 354**	**33.4**	**18.5**	**33 152**	**167 604**	**31.8**	**33.9**
North Africa	**879**	**2 758**	**0**	**391**	**33.0**	**20.0**	**1 972**	**29 148**	**12.5**	**41.6**
South Sudan	...	...	...	...	...	...	...	...	...	...
Sudan	879	2 758	0	391	33.0	20.0	1 972	29 148	12.5	41.6
West Africa	**625**	**5 603**	**110**	**1 451**	**11.4**	**30.8**	**5 093**	**33 600**	**21.7**	**43.4**
Benin	34	254	1.3	49	6.2	16.3	174	1 354	7.0	16.3
Burkina Faso	17	282	1.4	86	2.6	9.5	16	1 432	0.6	11.7
Gambia	31	29	...	...	14.9	10.6	221	754	32.1	88.7
Guinea	38	529	1.8	1.7	4.5	24.5	265	3 303	8.7	52.6
Guinea-Bissau	3	15	0.4	0.3	4.0	17.8	38	112	9.7	13.2
Liberia	128	851	95	808	319.8	437.2	3 255	6 267	623.5	324.2
Mali	166	455	7	10	25.7	23.5	210	3 432	7.0	31.0
Mauritania	82	1 042	-0.3	4	30.7	94.6	223	5 499	17.2	131.3
Niger	13	846	-1.8	1.6	3.9	35.2	61	4 940	3.3	67.1
Senegal	54	304	10	45	4.1	8.6	194	2 696	4.0	17.8
Sierra Leone	10	693	...	0	7.4	64.1	294	2 319	26.9	48.4
Togo	50	302	-4	445	22.3	43.3	141	1 494	10.6	34.3
Central Africa	**1 573**	**4 915**	**15**	**309**	**55.4**	**30.8**	**3 964**	**27 539**	**33.0**	**46.0**
Burundi	0.007	4	0.004	...	0.01	0.7	47	16	7.2	0.6
Central African Republic	7	36	...	...	8.9	11.3	109	620	11.7	40.3
Chad	699	388	...	...	73.5	15.1	1 036	4 758	60.6	35.5
Democratic Republic of the Congo	204	2 366	14	304	38.0	51.1	699	5 631	13.3	29.9
Equatorial Guinea	651	1 968	1.4	...	61.3	30.8	2 001	15 317	118.0	98.3
Rwanda	8	126	...	5	3.5	8.1	57	854	3.4	11.5
Sao Tome and Principe	3	28	...	0.3	13.9	41.2	14	345	20.0	111.9

	Average annual FDI inflows (US dollars, millions)		Average annual FDI outflows (US dollars, millions)		FDI inflows as percentage of gross fixed capital formation		Inward FD stock (US dollars, millions)		Inward FD stock as percentage of GDP	
	2001-2003	2011-2013	2001-2003	2011-2013	2001-2003	2011-2013	2001	2013	2001	2013
East Africa	**1 034**	**4 476**	**-0.04**	**-0.6**	**15.6**	**14.7**	**5 681**	**37 221**	**17.6**	**30.6**
Comoros	0.8	16	...	...	3.0	19.7	22	107	9.9	16.4
Djibouti	7	158	...	...	7.8	59.8	43	1 352	7.5	92.8
Eritrea	20	41	...	...	8.7	14.1	350	791	46.5	23.0
Ethiopia	356	619	...	...	17.9	5.0	1 291	6 064	16.2	12.6
Madagascar	83	820	-1.1	...	10.9	45.7	143	6 488	3.1	57.9
Somalia	-0.2	105	...	...	-0.08	43.4	4	883	0.3	67.6
Uganda	179	1 082	...	-0.6	13.8	21.0	962	8 821	15.2	38.3
United Republic of Tanzania	388	1 634	1.1	...	20.3	16.6	2 867	12 715	27.0	39.1
Southern Africa	**3 093**	**1 732**	**-7**	**2 203**	**77.8**	**6.4**	**16 442**	**40 097**	**78.9**	**24.2**
Angola	2 441	-4 736	-10	2 307	163.6	-27.1	10 123	2 348	106.9	1.9
Lesotho	34	49	0.02	20	13.2	7.0	358	1 237	50.6	54.3
Malawi	41	126	2	49	12.0	40.7	419	1 285	14.3	33.7
Mozambique	313	4 742	0.09	2	30.5	186.8	1 505	20 967	36.9	136.8
Zambia	264	1 550	...	-174	31.6	28.4	4 038	14 260	110.5	63.6
Asia and the Pacific	**838**	**5 040**	**52**	**130**	**3.9**	**5.7**	**9 234**	**33 679**	**10.7**	**10.7**
South-East Asia	**371**	**3 899**	**8**	**24**	**16.8**	**15.5**	**5 646**	**17 180**	**42.4**	**19.5**
Cambodia	126	1 219	8	36	17.0	50.1	1 729	9 399	43.3	60.0
Lao People's Democratic Republic	16	297	0.1	-9	4.8	10.4	612	2 779	36.3	27.8
Myanmar	225	2 355	...	...	22.4	12.4	3 305	14 171	43.3	25.1
Timor-Leste	5	28	...	-3	4.0	3.6	0	230	...	3.7
South Asia	**393**	**1 535**	**10**	**33**	**2.3**	**2.7**	**2 341**	**13 910**	**3.8**	**6.0**
Afghanistan	36	82	...	...	6.8	2.6	18	1 638	0.5	7.9
Bangladesh	344	1 343	10	33	2.5	3.6	2 202	8 596	4.3	6.1
Bhutan	3	23	...	...	0.8	1.9	4	163	0.9	8.2
Nepal	10	87	...	...	0.8	2.3	116	514	2.0	2.7
West Africa	**60**	**-394**	**34**	**73**	**3.5**	**-7.5**	**998**	**3 675**	**8.9**	**9.4**
Yemen	60	-394	34	73	3.5	-7.5	998	3 675	8.9	9.4
Oceania	**13**	**176**	**-0.4**	**6**	**10.8**	**28.7**	**249**	**1 915**	**27.8**	**68.5**
Kiribati	0.2	4	0.1	-0.2	0.5	4.8	0.7	14	1.2	8.0

	Average annual FDI inflows (US dollars, millions)		*Average annual FDI outflows (US dollars, millions)*		*FDI inflows as percentage of gross fixed capital formation*		*Inward FD stock (US dollars, millions)*		*Inward FD stock as percentage of GDP*	
	2001-2003	*2011-2013*	*2001-2003*	*2011-2013*	*2001-2003*	*2011-2013*	*2001*	*2013*	*2001*	*2013*
Samoa[1]	0.5	22	-1.7	3	5.2	35.6	72	282	30.2	40.1
Solomon Islands	-5	107	0.6	3	-9.6	41.8	97	1 040	28.9	94.8
Tuvalu	...	...	...	...	...	...	...	...	...	...
Vanuatu	18	44	0.5	0.6	40.5	19.8	79	578	30.6	70.4
Caribbean	**8**	**155**	**...**	**...**	**2.0**	**13.7**	**100**	**1 114**	**3.1**	**13.2**
Haiti	8	155	...	...	2.0	13.7	100	1 114	3.1	13.2
Memorandum:										
Total, developing countries	**195 677**	**744 220**	**62 734**	**438 937**	**11.3**	**9.4**	**1 875 636**	**8 483 009**	**26.9**	**31.1**
Total, developed countries	**478 526**	**654 232**	**554 029**	**975 284**	**7.9**	**7.7**	**5 629 969**	**16 053 149**	**22.3**	**36.4**
Total, world	**687 780**	**1 494 107**	**622 542**	**1 489 673**	**8.8**	**8.8**	**7 589 721**	**25 464 173**	**23.3**	**34.3**

Source: World Investment Report 2014 (http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=937).

Notes: Three dots (...) indicate that data are not available or are not separately reported. A blank indicates that the item is not applicable.

[1] Samoa has graduated from LDC status on 1 January 2014.

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Rights of indigenous peoples: Second International Decade of the World's Indigenous People

Achievement of the goal and objectives of the Second International Decade of the World's Indigenous People

Report of the Secretary-General

Summary

The present report is the final report on the achievement of the goal and objectives of the Second International Decade of the World's Indigenous People, following a midterm assessment in 2010 (A/65/166) and an assessment in 2012 (A/67/273). It provides examples of current efforts to achieve the objectives of the Programme of Action for the Second International Decade of the World's Indigenous People. One of the major highlights of the Second Decade was the adoption, in 2007, of the United Nations Declaration on the Rights of Indigenous Peoples. The present report also provides an analysis of the impact of the Second Decade on the achievement of the Millennium Development Goals. While there has been some progress in achieving the goals of the Second Decade, a substantial gap remains between the formal recognition of indigenous peoples and the implementation of policies on the ground. The post-2015 development agenda and the high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, afford an opportunity to make indigenous peoples part of the solution and to build a life of dignity, equity and hope for all.

* A/69/150.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 67/153, in which the Assembly requested the Secretary-General, in collaboration with Member States and the United Nations system, to prepare a comprehensive last report on the achievement of the goal and objectives of the Second International Decade of the World's Indigenous People, and its impact on the Millennium Development Goals, which would serve as an input to the preparatory process for the high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, and to the discussion on the United Nations development agenda beyond 2015.

2. The information contained herein is drawn from reports submitted by Member States, United Nations agencies and indigenous peoples' organizations in response to a questionnaire circulated by the secretariat of the Permanent Forum on Indigenous Issues. Other information included is from previous reports submitted to the General Assembly and the secretariat of the Permanent Forum, official statements, documents and publications.

3. In its resolution 59/174, the General Assembly proclaimed the Second International Decade of the World's Indigenous People, beginning on 1 January 2005, with the theme "Partnership for action and dignity". The Secretary-General appointed the Under-Secretary-General for Economic and Social Affairs as Coordinator of the Second Decade. In its resolution 60/142, the Assembly adopted the Programme of Action for the Second International Decade of the World's Indigenous People as the guideline for action.

4. The five interlinked objectives of the Programme of Action are:

(a) Promoting non-discrimination and the inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects;

(b) Promoting full and effective participation of indigenous peoples in decisions which, directly or indirectly, affect their lifestyles, traditional lands and territories, cultural integrity as indigenous peoples with collective rights, or any other aspect of their lives, considering the principle of free, prior and informed consent;

(c) Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples;

(d) Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth;

(e) Developing strong monitoring mechanisms and enhancing accountability at the international, regional and, particularly, the national level regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

II. Assessment of the implementation of the goal and objectives of the Second International Decade of the World's Indigenous People

5. The Programme of Action is taken as a reference point for the analysis and assessment of the implementation of the goal and objectives of the Second Decade. Selected measures, programmes and initiatives are also highlighted as examples of good practice and may be relevant to several objectives.

A. Promoting non-discrimination and the inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects (objective 1)

6. The major achievement of the Second Decade was the adoption, in 2007, of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in its resolution 61/295. The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples. It addresses both individual and collective rights, reiterates that indigenous peoples have the right to be free from any kind of discrimination and promotes their full and effective participation in all matters that concern them. It also ensures their rights to self-determination, to remain distinct and to pursue their own priorities in economic, social and cultural development. In this respect, the Declaration underscores the first objective of the Second Decade, of which the concept of non-discrimination, inclusion and equality within State and intergovernmental processes is a core element. The principle of equality can, in specific circumstances, require a State to take affirmative action in order to diminish or eliminate conditions that cause or help to perpetuate discrimination.

7. During the Second Decade, there have been some positive examples of efforts to combat discrimination. In the Congo, Act No. 5-2011 on the Promotion and Protection of the Rights of Indigenous Peoples was promulgated by the President on 25 February 2011, its development having begun in 2006. The wide-ranging forms of protection that it offers are consistent with the Declaration. More importantly, the law was developed in a participatory manner, including consultations with indigenous peoples themselves, the people of the Congo, international non-governmental organizations, United Nations agencies and relevant public institutions. It is the first of its kind in Africa and constitutes an important example of good practice in the region for the recognition and protection of the rights of indigenous peoples. The law specifically targets the disadvantaged conditions of indigenous peoples and promotes their collective and individual rights (see A/HRC/18/35/Add.5, paras. 12-13).

8. Another good example of work to promote non-discrimination and recognize the unique identities of indigenous peoples, in addition to promoting their participation, self-determination and inclusion in the implementation and evaluation of policies, resources, programmes and projects, is the National Congress of Australia's First Peoples, which was formally launched in May 2010. It provides national leadership in advocating recognition of the status and rights of Aboriginal and Torres Strait Islander peoples as First Nations peoples. Other examples include Japan and Greenland. In 2008, Japan recognized the Ainu people as the indigenous

peoples of Hokkaido. The Government set up an advisory council for future Ainu policy and established a council for Ainu policy promotion that is hosted by the Chief Cabinet Secretary and includes Ainu representatives. In 2009, with the inauguration of a new act on self-government, Greenland achieved greater self-determination within Denmark.

9. Access to justice, including combating discrimination in the criminal justice system, is of particular importance. The overrepresentation of indigenous peoples in the prison system is a global concern. Access to justice has been an area that relates to overcoming long-standing historical injustices and discrimination and the colonization and dispossession of the lands, territories and resources of indigenous peoples. Many States are now endeavouring to tackle discrimination in the criminal justice system. Article 63 of the Constitution of Paraguay states that, where there are jurisdictional conflicts, indigenous customary laws are to be taken into account. In November 2013, the United Nations Development Programme (UNDP) convened a meeting in Nicaragua on access to justice, at which the participants reiterated the importance of self-determination for indigenous peoples, including the recognition of indigenous justice systems, which have particular cultural and spiritual relevance for indigenous peoples.

10. The participation of indigenous peoples in the electoral system and the possibility of their being elected to parliaments and other decision-making bodies are increasing. In the Latin American context, there have been representatives elected from among indigenous communities, including the current President of the Plurinational State of Bolivia. Indigenous peoples have, however, largely been involved at the local, municipal and rural levels. Legal reforms to recognize the intercultural nature of States, the promotion of women's leadership, the establishment of mechanisms for binding political dialogue between indigenous peoples, private initiatives, parliaments and Governments and the recognition of intercultural democracies are necessary steps that are conducive to the full participation of indigenous peoples (see E/C.19/2014/6, paras. 13 and 75-76).

11. The parliament of New Zealand has seven Maori seats. This distinctive feature dates back to the Maori Representation Act of 1867, which initially created four such seats. In Burundi, to ensure the political integration of the Batwa indigenous peoples, the Constitution and the Electoral Code explicitly recognize the protection and inclusion of minority ethnic groups within the general system of government. The Constitution sets aside three seats in the National Assembly and three seats in the Senate for Batwa peoples. Article 2 of the Constitution of Mexico recognizes the right of indigenous peoples and communities to elect their own authorities and representatives. In the Congo, funding from the United Nations Indigenous Peoples' Partnership financed a multimedia campaign that resulted in 2,773 indigenous women voting, four times the number of indigenous women who voted in the elections in 2007.

12. Constitutional reforms are an essential step towards ensuring the recognition, inclusion and promotion of the rights of indigenous peoples. Several countries have been reforming their constitutional systems, with some recognizing the individual and collective rights of indigenous peoples. The interim Constitution of Nepal, adopted in 2007, defines Nepal as a multi-ethnic, multilingual, multi-religious and multicultural country and recognizes 59 indigenous nationalities. Articles 56 and 57 of the Constitution of Ecuador, adopted in 2008, acknowledge an intercultural and

plurinational State and recognize 21 collective rights. In the Plurinational State of Bolivia, the United Nations Declaration on the Rights of Indigenous Peoples has been incorporated into national law through Act No. 3760. The Constitution of Kenya of 2010 recognizes historically marginalized groups, including pastoralists and hunter gatherers that identify themselves as indigenous peoples, and provides an array of civil, political, socioeconomic and collective rights that have relevance to them. In June 2014, El Salvador amended the Constitution to recognize indigenous peoples and committed itself to adopting public policies that maintain and develop their indigenous identity. Other countries, including Australia, Chile and New Zealand, have publicly expressed the intention to consider constitutional changes that recognize indigenous peoples.

13. The creation of institutions and the allocation of resources for the implementation of national laws, policies, programmes and projects is a measure of the degree of commitment of Governments to not discriminating against and including indigenous peoples. Ministries and departments have been established specifically to implement national policies on indigenous issues in many countries, including New Zealand (Ministry for Maori Affairs) and the Bolivarian Republic of Venezuela (Ministry of Popular Power for Indigenous Peoples). In terms of funding, the European Union supports the participation of indigenous peoples in United Nations meetings through the European Instrument for Democracy and Human Rights. In the Plurinational State of Bolivia, a fund under the responsibility of a board composed of indigenous peoples' organizations manages 5 per cent of direct tax on hydrocarbons and, in 2013, provided grants for projects benefitting indigenous peoples. In 2013, Malaysia invested $29 million for infrastructural development for the benefit of indigenous peoples.

14. The use of indigenous languages in the public sector is essential to ensuring that laws, regulations and policies are understood. While several Member States are taking measures to revive indigenous languages, such as Japan, which is revitalizing the Ainu language, or are promoting the use of indigenous languages, such as Paraguay, which recognizes both Spanish and Guarani as official languages, indigenous languages are in general rarely understood and spoken by the non-indigenous population. In 2012, a language rescue plan in Chile established, through intercultural bilingual education, more than 450 educational complexes where civil and public officials are instructed in indigenous languages. In Finland, the Sami Language Act (1086/2003) guarantees the right of the Sami to use their own language before the courts and other authorities. There is also an obligation for public authorities to promote the linguistic rights of the Sami and not simply focus on interpretation and translation.

15. The promotion of indigenous media has played a key role in preserving ancestral languages and reaffirming the culture and identity of indigenous peoples. In Ecuador, the Government is implementing a programme to enhance community radio in the territories of 13 nationalities by training indigenous communicators and journalists to operate their own community radio stations. The Maori broadcasting sector has grown rapidly over the past two decades and currently includes radio, television and related e-media, which has successfully contributed to the revitalization of the Maori language. A UNDP project on communication for the empowerment of indigenous peoples in Asia has contributed to the formulation of country programmes seeking to enhance democratic spaces for indigenous peoples in Cambodia, Indonesia, the Lao People's Democratic Republic, Nepal and the

Philippines. The International Fund for Agricultural Development (IFAD) supported a small project implemented in Malaysia. Radio serves as a tool to address social exclusion, promote community development, encourage cultural and linguistic sustainability and increase education and training opportunities for local indigenous peoples.

B. Promoting full and effective participation of indigenous peoples in decisions which, directly or indirectly, affect their lifestyles, traditional lands and territories, cultural integrity as indigenous peoples with collective rights, or any other aspect of their lives, considering the principle of free, prior and informed consent (objective 2)

16. The full and effective participation of indigenous peoples in matters relating to their collective rights lies at the intersection between articles 3 and 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirm the right of indigenous peoples to self-determination and to freely pursue their economic, social and cultural development and the right to participate in decision-making in matters which would affect their rights, respectively. By Executive Order No. 13647 of 26 June 2013, the President of the United States of America established the White House Council on Native American Affairs with the aim of ensuring that the federal Government would engage in a more coordinated and effective government-to-government relationship with federally recognized tribes.

17. In Latin America, some countries recognize the importance of consultation with indigenous peoples. Following the promulgation in September 2011 of Act No. 29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, Peru moved to implement it through regulations approved by Supreme Decree No. 001-2012-MC. A methodological guide for consultation with indigenous peoples was prepared and training programmes on the right to consultation were offered to both indigenous peoples and government officials. In the Plurinational State of Bolivia, following the promulgation of Act No. 222 of 10 February 2012 on Consultation of Indigenous Peoples of the Isiboro-Sécure Indigenous Territory and National Park, processes of prior consultation were undertaken in cases beyond extractive projects, including infrastructure development. On 15 November 2013, Chile adopted Supreme Decree No. 66/2013, which regulates the procedure for consultation with indigenous peoples pursuant to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO), after an intense process of consultation with indigenous peoples that began in March 2011. At the same time, Chile clarified that consultation did not include the right of indigenous peoples to veto. Ecuador is continuing to work on an organization act on consultation with communes, communities, peoples and nationalities, which will regulate, through an internal law, the application of free, prior and informed consent. The Mexican National Commission for the Development of Indigenous Peoples organized a consultation on the priorities for the development of indigenous peoples, which resulted in a national development plan covering the period 2013-2018. Consultations have also been undertaken on the evaluation of environmental impacts of infrastructural projects such as the "independence aqueduct", in which 70 Yaqui indigenous peoples participated.

18. In Asia, the Philippines National Commission on Indigenous Peoples, created in 1997 in the framework of the Indigenous Peoples' Rights Act (one of the first national laws specific to the rights of indigenous peoples), promulgated in 2012 revised guidelines on the exercise of free prior and informed consent and related processes, which include consent by indigenous peoples. On the basis of a series of nationwide public hearings, in August 2013 the Human Rights Commission of Malaysia issued a report on the land rights of indigenous peoples in which it recommended that indigenous customary rights to land should be recognized and called for the establishment of an independent national commission on indigenous peoples.

19. In recognition of the unique rights and potential vulnerabilities of indigenous peoples, performance standard No. 7 of the International Finance Corporation was revised in 2012 to require the free, prior and informed consent of indigenous peoples in certain circumstances where they were directly and adversely affected. In 2013, the Corporation undertook its first assessment of a project applying the free, prior and informed consent principle under the revised performance standards, with the Pacific Infrastructure oil and gas company in Colombia, and proposed solutions to avoid negative impacts on the community. The Regional Office for Central America of the Office of the United Nations High Commissioner for Human Rights (OHCHR), together with the Office of the Resident Coordinator, supported the consultation process initiated by the Government of Costa Rica with indigenous peoples affected by the El Diquís hydroelectric project. At the request of the Government of Panama, the Regional Office and the Resident Coordinator also facilitated negotiations with indigenous peoples affected by a legislative proposal to regulate mining and hydroelectric development in indigenous territories. During peace negotiations to end conflict in Nepal, ILO provided support to the dialogue process that led to the peace agreement, including the ratification of ILO Convention No. 169.

20. Indigenous peoples experience displacement and relocation from their traditional territories and dispossession of their lands and resources by both government-led and private-led projects in such areas as extractive industries, logging, large-scale plantations, megaprojects and dams. In such situations, national and regional courts have advanced the implementation of the United Nations Declaration on the Rights of Indigenous Peoples by affirming the collective rights of indigenous peoples. In its decision No. 35/PUU-X/2012, the Constitutional Court of Indonesia found that customary forests were no longer State forests, thereby recognizing the right of indigenous peoples to manage the lands in which they live. In February 2010, the landmark ruling by the African Commission on Human and Peoples' Rights in the land rights case of the Endorois people condemned the expulsion of the Endorois from their ancestral lands around Lake Bogoria in Kenya. In October 2007, the Supreme Court of Belize, in *Aurelio Cal et al v. Attorney General of Belize*, made use of the Declaration and other international instruments to interpret the Constitution and affirm the rights of indigenous Mayans' customary tenure to land and to instruct the Government to refrain from any act that might prejudice their use or enjoyment of that land.

21. Within the United Nations system, there have been several initiatives and models regarding consultations with indigenous peoples. In the context of the continuing process to review and update safeguards, the World Bank has since March 2013 held consultations and a global dialogue with indigenous peoples to

strengthen its engagement process. The African Development Bank convened its first historic Forum on Indigenous Peoples' Development Issues in February 2013, designed to create a space for indigenous peoples and other stakeholders to set the tone for the Bank's future engagement with indigenous peoples. The Global Environment Facility Indigenous Peoples Advisory Group, established in 2013, represents a step forward in implementing the Facility's principles and guidelines for engagement, adopted in 2012, by enhancing dialogue among indigenous peoples, partner agencies, the secretariat and other experts.

22. The participation of indigenous peoples at the international level is increasing and becoming more effective, with United Nations agencies facilitating participation at meetings. These include the United Nations Voluntary Fund for Indigenous Peoples, which is administered by OHCHR, the Voluntary Fund for Accredited Indigenous and Local Communities of the World Intellectual Property Organization and other funding arrangements for meetings under the auspices of the Convention on Biological Diversity and the Climate Investment Funds.

23. At the request of the Human Rights Council, in 2012 the Secretary-General submitted a report on ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them (A/HRC/21/24). Detailed therein are the difficulties that representatives of indigenous peoples may encounter in participating in the work of the United Nations and the current rules and practices in relation to such participation, irrespective of whether organizations have consultative status with the Economic and Social Council as non-governmental organizations. As a result of such difficulties, indigenous peoples' organizations have been unable to participate in important United Nations meetings and events on issues directly relevant to them. It is concluded therein that the participation of indigenous peoples in the work of the United Nations has been a positive experience for the Organization and has enabled historically excluded peoples to work together peacefully and in partnership with States to advance their issues and elaborate their rights. The Secretary-General sets out issues to be considered with regard to implementing a procedure to enable representatives of indigenous peoples to participate in the work of the United Nations, including a suggestion to establish a working group to provide guidance on possible procedural and institutional steps.

C. Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples (objective 3)

24. Indigenous peoples have called for a human rights-based approach to development that respects their culture and identity, including their individual and collective rights (see E/C.19/2010/14). In Latin America and the Caribbean, there has been elaboration of indigenous concepts and practices of development, such as "living well", translated as *sumak kawsay* and *sumaq qamaña* in the Quechua and Aymara languages of the Andes. Such principles promote interculturality and imply living together in a community and in harmony with nature. Both Ecuador and Nicaragua, for example, have endorsed the principle of living well, with Nicaragua developing intercultural systems of health care and education that reflect the

cosmovision of indigenous peoples. Chile has created programmes for intercultural health so that hospitals and other health-care services can integrate traditional indigenous practitioners, traditional health-care systems and ancestral medicine.

25. At the global level, several United Nations entities and intergovernmental organizations have been redefining their own development policies, either by developing corporate strategies, strategic frameworks and policies or by implementing specific projects and initiatives that respect the cultural and linguistic diversity and development priorities of indigenous peoples. The Food and Agriculture Organization of the United Nations, IFAD, the United Nations Environment Programme and UNDP have all developed policies on engagement with indigenous peoples. In 2009, the IFAD Executive Board approved a policy that prescribes the application of free, prior and informed consent and the enhancement of community-driven development approaches in its programmes and projects. UNEP endorsed policy guidance on indigenous peoples in 2012 and is currently developing its environmental, social and economic sustainability safeguards, which include a policy regarding indigenous peoples. Since 2008, the United Nations Educational, Scientific and Cultural Organization has identified indigenous peoples as one of the priority groups in its medium-term strategy. The United Nations Population Fund (UNFPA) developed a corporate strategy on indigenous issues in 2011, with a focus on addressing inequalities and promoting sexual and reproductive health and rights.

26. United Nations agencies have also taken initiatives to protect indigenous traditional knowledge and genetic resources. The Food and Agriculture Organization of the United Nations is incorporating the traditional knowledge of indigenous peoples, especially in its work relating to community-based forest management in the Peruvian Amazon and to fire management in the United Republic of Tanzania. The United Nations Educational, Scientific and Cultural Organization, under its programme on local and indigenous knowledge systems, has implemented community-based participatory projects to support the transmission of indigenous knowledge. At its tenth meeting, the Conference of the Parties to the Convention on Biological Diversity adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. It also adopted the Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity in order to guide the development of models for research, access to, use, exchange and management of information concerning traditional knowledge.

27. Indigenous peoples are increasingly concerned about the effects of development on their lands, territories and natural resources and the challenges to the realization of their individual and collective rights. Mega-development and infrastructure projects, including projects carried out by extractive industries for mining and logging, among others, can often cause displacement, destruction and dispossession, without compensation and in disrespect of the right to free, prior and informed consent. A member of the Permanent Forum on Indigenous Issues produced a consolidated report on extractive industries and their impact on indigenous peoples (E/C.19/2013/16), drawing on the work of the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples, in which he recommended the establishment of

mechanisms for dialogue and negotiation between Governments, private companies and indigenous peoples on an equal basis. Private companies that operate or seek to operate on or in proximity to indigenous lands should adopt codes of conduct that bind them to respect the rights of indigenous peoples to land, territories and resources in accordance with relevant international instruments, in particular the United Nations Declaration on the Rights of Indigenous Peoples. On the basis of the guiding principles developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, companies have, at the very least, the duty to comply with international standards relating to the human rights of indigenous peoples (ibid., paras. 60, 63, 85 and 89).

28. Indigenous peoples have been proactive in participating in international conferences in order to advance their rights and influence the outcome of development processes that may affect their lives and communities. For example, they participated in the formal negotiation of the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in 2012. They were also involved in the framework of the International Conference on Population and Development beyond 2014 global review through the first session of the Regional Conference on Population and Development in Latin America and the Caribbean, held in Montevideo in August 2013. Indigenous women have also achieved greater capacity to engage in advocacy and influence processes relating to the work of the Commission on the Status of Women. At the fifty-sixth session of the Commission, they advocated the adoption of resolution 56/4, entitled "Indigenous women: key actors in poverty and hunger eradication".

D. Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth (objective 4)

29. The concept of interculturality described above has been applied in targeted policies and programmes for indigenous peoples, especially in Latin America and the Caribbean. National education policies and curricula have been reformed to include an intercultural perspective that integrates both indigenous learning systems and traditional knowledge. The Government of Burkina Faso has introduced schooling for nomadic children through the creation of mobile schools. In Ecuador, the Intercultural Education (Organization) Act revitalized ancestral knowledge for the development of an intercultural society within the intercultural bilingual education system. In 2013, Mexico established a model of intercultural education. The Plurinational State of Bolivia is implementing the Avelino Siñani-Elizardo Perez Act, which envisages the interplay between a basic plurinational curriculum, a regionalized curriculum and a diversified curriculum that is culturally, linguistically and territorially appropriate. In Chile, the National Indigenous Development Corporation has implemented more than 150 intercultural kindergartens that received school materials relating to indigenous cultures and, in 2012, it modified the curricular bases to adapt them to the learning need of indigenous pupils. New Zealand has implemented a strategy covering the period 2013-2017 that aims to increase the use of the Maori language in education. In Norway, the Kindergarten

Act states that kindergartens must take account of children's social, ethnic and cultural background, including the language and culture of Sami children.

30. In the area of health, several countries have integrated the culture and traditional knowledge of indigenous peoples into public health policies and plans at the national, regional and local levels. In Malaysia, mobile health units such as village health teams and the flying doctor service have increased access to almost 90 per cent of indigenous peoples living in remote areas. In Paraguay, the 2008 national policy on indigenous health, which was later gave rise to a directorate for indigenous health, highlighted the need to establish family care units and to employ indigenous personnel. Ecuador is promoting culturally appropriate deliveries in public hospitals and is revitalizing the role of midwives in the national health system. In Australia, work is under way on a new social and emotional well-being framework for Aboriginal and Torres Strait Islander peoples that recognizes the importance of connections to culture in the health of indigenous peoples. On 19 December 2013, the Plurinational State of Bolivia adopted the Ancestral Bolivian Traditional Medicine Act with the objective of regulating the exercise and practice of traditional ancestral medicine in the national health system.

31. Indigenous young people continue to face political, social and economic challenges, including poverty, marginalization and unemployment. In January 2013, at an expert group meeting organized by the secretariat of the Permanent Forum on Indigenous Issues, indigenous youth experts expressed concern about society's lack of awareness and misrepresentation of the histories, cultures and current circumstances of indigenous peoples. They called for education systems to teach history and social diversity more thoroughly and accurately. In May 2013, the United Nations Children's Fund (UNICEF), in collaboration with the secretariat of the Permanent Forum and the Global Indigenous Youth Caucus, launched an adolescent-friendly version of the United Nations Declaration on the Rights of Indigenous Peoples targeting persons between 13 and 18 years of age. UNICEF was also instrumental in working with the Committee on the Rights of the Child on general comment No. 12 on the right of the child to be heard, which spells out what could be done to increase the participation of indigenous young people. ILO pays particular attention to indigenous women, children and young people through various programmes, including on child labour, forced labour and domestic violence. Several projects provide internships to young indigenous peoples at ILO. At the national level, Greenland and the UNICEF office in Denmark entered into a cooperation agreement in August 2010. In 2012, the first children's rights institution with a spokesperson for children was established in Greenland.

32. In 2009, Paraguay established a support unit for indigenous children and adolescents that addresses the situation of street children and young people. Australia funds diversionary programmes for indigenous children to help them to avoid incarceration and to tackle the incidence of petrol sniffing in remote indigenous communities. The Ministry of Education of the Plurinational State of Bolivia provides annual scholarships to students with limited financial resources and there are special quotas for indigenous students in the indigenous universities. Indigenous children and young people in Chile can apply to an indigenous grants programme, designed to assist indigenous students financially. In Finland, the Ministry of Education and Culture has taken long-term measures to support the activities of young Sami people as part of the overall youth policy. A youth council

set up in 2010 in connection with the Sami parliament aims to improve the living conditions of young Sami people and to promote their active citizenship.

33. Indigenous women suffer from triple discrimination: discrimination as women, discrimination as indigenous women and discrimination for being the face of poverty. In 2013, ILO, UNICEF, UNFPA, the United Nations Entity for Gender Equality and the Empowerment of Women and the Office of the Special Representative of the Secretary-General on Violence against Children undertook a joint study on violence against indigenous girls, adolescents and young women. Drawing on examples from Africa, Asia and the Pacific and Latin America, they found that violence against indigenous girls and women was heightened because of the history of colonial domination, dispossession of indigenous peoples, economic and political exclusion and the lack of basic services such as health care, schooling and birth registration. Critical gaps in knowledge and data on violence against indigenous girls, women and adolescents were evident. In 2014, the Mexican National Commission for the Development of Indigenous Peoples developed homes run by indigenous women to prevent and eradicate violence against women with an intercultural approach, strengthening gender equality within the indigenous population and co-funding leadership programmes for indigenous women. Internationally, the Fund for Gender Equality, through its programme on strengthening governance systems and indigenous women's networks, has increased the participation, visibility and leadership capacity of indigenous women at the local, regional and international levels.

34. As recognized by the General Assembly, the United Nations system should enhance coordination towards a more coherent, comprehensive and integrated approach to the rights of indigenous peoples. The Inter-Agency Support Group on Indigenous Peoples' Issues was established to support and promote the mandate of the Permanent Forum on Indigenous Issues within the United Nations system. In 2009, the United Nations agencies in Latin America and the Caribbean established an inter-agency regional support group on indigenous issues with the objective of raising awareness of the United Nations Declaration on the Rights of Indigenous Peoples, exchanging experiences and establishing space for dialogue and participation between indigenous peoples and Governments. In February 2014, United Nations regional directors met in Panama and urged the resident coordinators to constitute an inter-agency group in each country. Such initiatives represent good practice in institutionalizing the attention that the agencies dedicate to indigenous peoples' issues and could be replicated in other regions.

35. The United Nations Indigenous Peoples' Partnership was launched in May 2011. Featuring UNFPA, ILO, OHCHR, UNICEF and UNDP, it is the first global inter-agency initiative to support country efforts to advance the rights of indigenous peoples. Six country projects were approved by its policy board in October 2011, along with a regional programme, and Partnership-funded projects have contributed to increasing capacity to tackle indigenous peoples' issues at the country level.

E. Developing strong monitoring mechanisms and enhancing accountability at the international, regional and, particularly, the national level regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives (objective 5)

36. In his annual report to the General Assembly (A/68/317), the Special Rapporteur on the rights of indigenous peoples elaborated on the factors debilitating the commitment and action by States and other actors with regard to implementing the United Nations Declaration on the Rights of Indigenous Peoples. Together with promoting good practices and addressing cases of alleged human rights violations through the communications procedure, the Special Rapporteur contributed to building constructive dialogues with Governments, indigenous peoples, non-governmental organizations, United Nations agencies and others, in addition to achieving greater responsiveness to the human rights concerns of indigenous peoples and assisting States and other actors to tackle those concerns.

37. The Inter-American Commission on Human Rights has affirmed the rights of indigenous peoples through the individual petition system, the granting of precautionary measures and the development of specialized in-depth studies and reports. The jurisprudence of the Commission, including cases such as *Mayagna (Sumo) Awas Tingni community v. Nicaragua* (2001) on property rights and *Saramaka People v. Suriname* (2007) and *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012) on free, prior and informed consent, illustrates some of the recurrent problems that indigenous peoples continue to face.

38. The African Commission on Human and Peoples' Rights, and specifically its Working Group on Indigenous Populations/Communities in Africa has been central to the advancement of the rights of indigenous peoples in Africa. The reluctance of States and other major stakeholders regarding the applicability of the concept of indigenous peoples in Africa notwithstanding, the Commission and the African Court on Human and Peoples' Rights are significant in strengthening the judicial and quasi-judicial protection system of human and peoples' rights on the continent. The Working Group continues to undertake promotion missions, research and information visits, hold awareness-raising seminars and send urgent appeals to States parties to the African Charter on Human and Peoples' Rights.

III. Impact of the Second International Decade of the World's Indigenous People on the Achievement of the Millennium Development Goals

39. While Member States have put significant effort into attaining the Millennium Development Goals, indigenous peoples have been largely invisible in the process. The Permanent Forum has devoted much attention to the Goals, with its fourth session, in 2005, focusing on Goals 1 (eradicate extreme poverty and hunger) and 2 (achieve universal primary education) within the context of indigenous peoples' issues. At its fifth session, in 2006, the participants considered redefining the Goals. During the sessions, many indigenous peoples stressed the need to redefine the implementation of the Goals to better incorporate their needs and perspectives. Indigenous peoples from developed countries expressed their view that the Goals

did not include them because they were seen by their Governments to be a matter for foreign policy and international aid programmes.

40. The secretariat of the Permanent Forum conducted desk reviews of national efforts to attain the Millennium Development Goals in 2006, 2007, 2008 and 2013/2014 to determine the degree to which indigenous peoples were considered in the reports and included in the drafting, implementation and monitoring of the Goals. It concluded that the Goals had not taken full account of the specificities of indigenous peoples and that the indicators on progress, by measuring national averages, had failed to capture the specific situation of indigenous peoples. Indigenous peoples are largely invisible in the implementation, monitoring and evaluation of the Goals. In the 2013 report on assessing progress in Africa towards the Goals, the theme was food insecurity, but there were no specific references to indigenous peoples. The report clearly shows that the lack of disaggregated data on ethnic origin, agricultural practices, language, rural/urban areas and, most importantly, indigenous/non-indigenous identity makes it more difficult to target regional or continental initiatives that can improve the lives of indigenous peoples in Africa.

41. The report for Asia and the Pacific, while not specifically mentioning indigenous peoples, contains several references to ethnic minorities and marginalized communities. It is indicated that inequality is also a growing concern, with income inequality evident between groups living in urban and rural environments, men and women and ethnic groups. Significantly, in the base model for the post-2015 agenda, it is suggested that the next sustainable development goals should "track inequality and exclusion by monitoring the distribution and progress at the 'bottom-end' across goals and targets through disaggregated data (along the lines of gender, ethnicity, location, etc.) to ensure that no one is left behind".[1] Another important priority in the report relevant to indigenous peoples was the suggestion that the post-2015 development agenda include mitigation and adaptation strategies vis-à-vis climate change.

42. In the report of Colombia on efforts to attain the Goals, the world's first national framework for realizing indigenous peoples' rights in response to the Millennium Declaration was created with the inclusion of five new goals relevant to indigenous peoples. In reference to Goal 1, it is emphasized that the territories with the highest levels of poverty are those in which there are many indigenous peoples. Other initiatives reported in reference to Goal 1 have indicated that targeted programmes are critical to eradicating poverty, as demonstrated by the San Development Programme that has played a key role in the reduction of poverty for indigenous peoples in Namibia. Under Goal 1, Brazil has implemented two projects, "Bolsa familia" and "Carteira Indigena", the first to support the needs of nearly 56,000 indigenous families and the second to support food security, income generation and cultural enhancement projects proposed and implemented by indigenous peoples themselves. The major challenge faced by the Government, however, is to adapt the programme to the sociocultural realities of the various ethnic groups who benefit from the initiative.

[1] Asian Development Bank, Economic and Social Commission for Asia and the Pacific and United Nations Development Programme, *Asia-Pacific Aspirations: Perspectives for a Post-2015 Development Agenda — Asia-Pacific Regional MDGs Report 2012/2013* (2013), p. 62.

43. Several reports include a warning of the potential adverse effects of development objectives relating to economic growth and the extraction of natural resources. With regard to Namibia, in terms of Goal 7, mention was made of the successful implementation of a community-based natural resource management programme, a rights-based policy and legislation founded on the premise that, if resources have sufficient value to local people and they are allowed exclusive rights, they will use the resources more sustainably. In respect of Bangladesh, it is noted that some progress has been made with regard to Goal 7 in that participation in the social forestry programme has increased, although this could also have undesirable effects for indigenous peoples. With regard to Guyana, it is underlined that, although the low-carbon development strategy resulted in consultations with more than 220 communities, free, prior and informed consent was not sought from indigenous peoples. Similar shortcomings are also found in the strategy with regard to reducing emissions from deforestation and forest degradation.

44. While most of the reports do not include disaggregated data on indigenous peoples, that of Paraguay presents a methodology to measure the poverty line that has been adjusted by disaggregating data into four consuming domains, including rural areas, which provides some indication of poverty among indigenous households. The report contains some information on indigenous peoples with references to statistical native language variant. On this basis, there is an ethnic determinant to poverty. It is stated that 24.1 per cent of the people whose mother tongue is Spanish live in poverty, while 45.7 per cent of the people whose mother tongue is an indigenous language live in poverty and 13.5 per cent in extreme poverty. Furthermore, poverty is even more insidious for indigenous women.

45. In 2012, for the first time in Chile, the Goals were measured specifically for the indigenous population, in order to allow for a better focus of public policies. Regarding Goal 1, inequality remains, a general improvement of the indicators for both indigenous and non-indigenous population notwithstanding. At the national level, the percentage of the population living on less than $1.25 per day fell from 10 per cent in 1990 to 1.5 per cent in 2009, while for the indigenous population the figure fell from 10 to 2.7 per cent. This progress notwithstanding, indigenous women fall behind in most of the indicators, for example in the rate of participation in the labour market or in economic participation.

46. Some reports include data disaggregated by major ethnic group, or rural/urban population or uplands/lowlands population. For example, in the upland areas of the Lao People's Democratic Republic, where most of the indigenous peoples live, villages account for 25 per cent of the total population, yet represent 39 per cent of the poor. For Goal 4, children from remote ethnic groups have an under-5 mortality rate that is twice as high as those from lowland ethnic groups.

47. At the international level, besides the four indicators for traditional knowledge established by the Conference of the Parties to the Convention on Biological Diversity, few indicators have been articulated with a view to monitoring the specific conditions of indigenous peoples. The Statistics Division has been developing a system of environmental-economic accounts that, if further enhanced and implemented at the country level, may represent a significant turning point in the development of a coherent and integrated set of indicators for monitoring the situation and well-being of indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, including within the

framework of the new post-2015 development agenda. In addition, OHCHR is developing a framework for human rights-based indicators under which the Declaration could be made operational.

48. With the Goals coming to an end, and the process to define a new post-2015 development agenda under way, it is important to ensure that indigenous peoples are included. A common vision for the post-2015 development agenda calls for a human rights-based approach to development, taking into account issues of equity and sustainability. The principles of participation, accountability, non-discrimination, equity and linkages to international legal standards, including the United Nations Declaration on the Rights of Indigenous Peoples, should guide policies and actions in this regard. Real partnerships for development must be established. To achieve an accurate understanding of poverty and well-being from the perspective of indigenous peoples, it is necessary to have revised indicators of poverty that capture the specific perceptions and views of indigenous peoples and to collect disaggregated data.

IV. Conclusions and recommendations

49. The implementation of the Second Decade has achieved some major successes, such as the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Constitutional and legislative frameworks that recognize indigenous peoples, including targeted policies and programmes, have been developed in some countries. There continues, however, to be a gap between the formal recognition of indigenous peoples and the implementation of policies on the ground.

50. Indigenous peoples' own forms of governance need to be recognized and strengthened by Member States. Indigenous peoples continue to face difficulties when it comes to influencing public policy, while indigenous women face even greater barriers in participating in policy decisions. Discriminatory practices exist at every level of society, from the family and community level to the level of State institutions. This only exacerbates marginalization and economic exclusion. Greater political participation is being called for by indigenous young people, who are increasingly and significantly participating through information and communications technology at both the community and State levels.

51. Disparities in access to opportunities for indigenous women, children and young people continue to exist. Furthermore, priority must be given to indigenous persons with disabilities, given that they face barriers, what with being indigenous and having disabilities, and often live on the margins of society, frequently within their own indigenous communities.

52. The post-2015 development agenda provides an opportunity to develop indicators to measure the progress of development initiatives that address the needs of indigenous peoples. Intergovernmentally agreed outcome documents must pay particular attention to the situation of indigenous peoples and Governments need to make commitments in this regard. Sustainable development can be achieved only if the full and effective participation of indigenous peoples in matters that concern them or may affect them is

guaranteed. For this purpose, indigenous governance structures and institutions must be strengthened.

53. In view of the successes and gaps identified at the national and international levels in the achievement of the goal and objectives of the Second Decade, the following recommendations are made:

(a) Establish a third international decade of the world's indigenous people, in pursuance of the goal of fully and effectively implementing the United Nations Declaration on the Rights of Indigenous Peoples;

(b) In accordance with articles 41 and 42 of the Declaration, there is a need to institutionalize mechanisms for international coordination and cooperation on issues relating to indigenous peoples, such as the Inter-Agency Support Group on Indigenous Peoples' Issues, which can be replicated at the regional and national levels;

(c) Recognize indigenous peoples as distinct peoples and not as marginalized and vulnerable groups in both the sustainable development goals and the post-2015 development agenda and develop appropriate goals and targets that specifically recognize the rights and priorities of indigenous peoples;

(d) Recognize and strengthen indigenous peoples' own forms of governance and representatives in order to establish constructive dialogue and engagement with international and national authorities, public officials, the private sector and transnational corporations, through participatory mechanisms that uphold the right to free, prior and informed consent;

(e) In recognition of the crucial role of United Nations country teams, ensure the full and effective application in programming of the United Nations Development Group guidelines on indigenous peoples' issues, adopted in February 2007, so that the priorities of indigenous peoples are included in common country assessments/United Nations development assistance frameworks and in future monitoring and reporting tools on the post-2015 development agenda;

(f) Establish a United Nations system-wide action plan to promote the rights of indigenous peoples and their development priorities and needs, to be included among the priorities for the five-year action agenda of the Secretary-General;

(g) Establish mechanisms to ensure the effective participation of indigenous peoples at all levels of the United Nations that take into account the distinct identity of indigenous peoples through their governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned.